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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760, SUB-FILE 44

IN THE MATTER OF ARBITRATION BETWEEN UNION PACIFIC RAILROAD
COMPANY AND THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND
TRAINMEN

(Arbitration Review)

ENTERED
Office of Proceedings

MAY 23 2005

CARRIER'S REPLY TO PETITIONER'S APPEAL

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Public Record

Article I, § 11 of New York Dock creates a arbitral mechanism to resolve disputes between rail carriers and their employees that arise out of the "interpretation, application or enforcement" of the New York Dock Conditions. On April 14, 2005, New York Dock Arbitrator James R. McDonnell found that, given this standard, he was without jurisdiction to decide the merits of a job assignment dispute between Union Pacific Railroad Company ("UP") and the Brotherhood of Locomotive Engineers and Trainmen ("BLET"). Because the dispute had nothing to do with implementation of the relevant merger (UP's merger with the Southern Pacific Transportation Company ("SP")) or any provision of New York Dock, Arbitrator McDonnell concluded that jurisdiction belonged to an arbitrator under § 3 of the Railway Labor Act ("RLA"), 45 U.S.C. §153. BLET now appeals that ruling.

BLET's appeal ignores the plain language of Article I, § 11 of New York Dock that limits the jurisdiction of New York Dock arbitrators to disputes over the "interpretation, application or enforcement" of New York Dock. BLET cannot cite a single provision of New York Dock that is remotely implicated by the parties' dispute over UP's assignment of engineers from the St. Louis, Missouri, and Salem, Illinois, areas to work in Dexter, Missouri. In fact, the

dispute, which arose four years after the UP-SP merger had been fully implemented in the relevant area, is simply the normal kind of seniority/bumping grievance that UP and BLET routinely arbitrate under the RLA. Given the complete absence of any connection between the dispute at issue and the New York Dock Conditions, Arbitrator McDonnell's conclusion that the parties' dispute should be resolved in arbitration under § 3 of the RLA cannot be set aside under the limited review of arbitration awards conducted by the Board.

FACTUAL OVERVIEW

A. The Union Pacific/Southern Pacific Merger

UP is a rail carrier operating in the western United States. UP's current system is comprised of several merged carriers. One such merger occurred in August 1996, when the Board approved the merger of the UP (and its affiliated carriers) and the SP (and its affiliated carriers). Union Pac. Corp. - Control and Merger - Southern Pac. Transp. Co., 1 S.T.B. 233 (1996). As required by 49 U.S.C. § 11326, the Board's approval mandated that employees adversely affected by the merger receive the labor protections set forth in New York Dock Ry. - Control - Brooklyn E. Dist., 360 I.C.C. 60 (1979), aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2nd Cir. 1979) ("New York Dock").

At the time of the merger, both UP and SP operated trains traveling to and from the St. Louis area. For example, UP operated runs from Dupou, Illinois, to Poplar Bluff, Missouri, and from Salem, Illinois, to Poplar Bluff, while SP operated a run from East St. Louis, Illinois, to Illmo, Missouri. St. Louis Hub Merger Implementing Agreement (the "St. Louis Hub Agreement"), Ex. A, at 1-2.¹ Following the merger, UP consolidated these and other operations through a "Hub and Spoke" system. Under the Hub and Spoke system, UP established

¹ UP is filing simultaneously herewith an Appendix of all exhibits cited herein.

consolidated hubs at strategic locations throughout the railroad, with different runs (i.e., spokes) emanating from each of the hubs. Ex. A, at 2-17. St. Louis was one such hub. Ex. A, at 3.

B. The St. Louis Hub Agreement

UP and BLET negotiated separate agreements for each hub. One such agreement is the St. Louis Hub Agreement, dated April 15, 1998, a copy of which can be found in UP's Appendix as Ex. A. The St. Louis Hub Agreement contains language that specifically relates to the New York Dock Conditions. For instance, it establishes the mechanism for the merging of seniority lists, the payment of dismissal and displacement allowances to employees adversely affected by the merger, and the payment of relocation and other benefits for eligible employees required to change residences. Ex. A, at 17-18, 25-26.

UP implemented the St. Louis Hub Agreement and the operational changes permitted thereby on November 1, 1998. The UP-SP merger has been fully implemented, and the previously separate railroads now operate as a single carrier.

The provisions of the St. Louis Hub Agreement, however, are not limited to implementation of the UP-SP merger and the payment of New York Dock benefits. The St. Louis Hub Agreement also addresses general terms and conditions of employment for engineers – the types of issues normally found in traditional railroad collective bargaining agreements (“CBAs”). For example, the St. Louis Hub Agreement establishes runs that engineers will operate, creates pools of engineers who will operate those runs, details how assignments will be maintained for each pool, and establishes extra boards to protect those pools. Ex. A, at 2-17, 19-21. The Agreement also establishes rates of pay, overtime rates, and transportation and lodging rules for employees in the pools created by the Agreement. Ex. A, at 19.

Two runs that are relevant to the instant dispute are established in Article I of the St. Louis Hub Agreement. Specifically, the St. Louis Hub Agreement establishes runs between St. Louis and Dexter, and between Salem and Dexter. The St. Louis Hub Agreement also provides that St. Louis and Salem will be the home terminal for these runs, while Dexter will be the away-from-home terminal.² Ex. A, at 3-5, 10-12.

Certain engineers, however, were permitted to effectively maintain their home terminal in Dexter for a defined period of time pursuant to a "reverse lodging" arrangement. Ex. A, at 5, 12. The terms of the "reverse lodging" arrangement were set forth in a side letter to the St. Louis Hub Agreement, which became known as Side Letter No. 11. Ex. A, at 45-47. Reverse lodging, as the name implies, essentially reverses an employee's home and away-from-home terminals. Thus, engineers in the St. Louis-Dexter or Salem-Dexter pools who elected "reverse lodging" would effectively have their home terminals in Dexter. "Reverse lodging" engineers would receive company-paid lodging and additional "held away from home terminal" pay while in St. Louis and Salem (rather than Dexter). Obviously, allowing for "reverse lodging" has nothing to do with any of the benefits provided for in the New York Dock Conditions. Instead, the "reverse lodging" arrangement discussed in Side Letter No. 11 addresses issues typically job assignment issues normally found in traditional CBAs.

C. The Agreement at Issue: The October 18 Letter of Understanding

Providing certain engineers in Dexter with an opportunity to elect "reverse lodging" meant that the St. Louis-Dexter and Salem-Dexter runs would be protected by engineers living in

² The designation of a particular location as a home terminal or away-from-home terminal is significant in several respects. An engineer takes a train from his home terminal to another point on the UP system, called the away-from-home terminal. At his away-from-home terminal, the engineer is provided lodging, and may also be entitled to certain meal and other allowances, including additional pay if the engineer is required to remain at the away-from-home terminal for a certain period of time. At some point, the engineer is assigned to take a train from the away-from-home terminal back to his home terminal.

both St. Louis/Salem and Dexter. UP also maintained other jobs in the Dexter area (which is about a 3-4 hour drive from St. Louis). Ex. A, at 3-6. Frequently, a vacancy would occur on one of these Dexter-based jobs and would, under applicable CBA rules, become available for bid by eligible engineers. If no one bid on the vacancy, UP would force a junior engineer living in St. Louis and Salem to fill the position, again in accordance with its agreements with BLET. The junior engineers in St. Louis and Salem were, not surprisingly, unhappy about these forced assignments, and contended that engineers who had elected "reverse lodging" and were allowed to stay in Dexter should be required to fill those assignments before anyone from St. Louis, Salem, or elsewhere should be forced to do so.

BLET raised this concern with UP in mid-1999. UP agreed with BLET's position and the parties accordingly entered into an agreement to require the Dexter "reverse lodging" engineers to fill Dexter-area assignments first under certain circumstances. In a Letter of Understanding dated October 18, 1999 ("October 18 Letter of Understanding"), UP and BLET agreed that:

If there are unfilled positions on the extra board, locals or other road assignments (including the Dexter - Memphis pool) with a home terminal at Dexter or in the vicinity, the junior engineers at Dexter, (in the St. Louis - Dexter and Salem - Dexter pools) who are entitled to reverse lodging and held away will be required to cover such positions or assignments.

October 18 Letter of Understanding, Ex. B, at 1.³ Like Side Letter No. 11, the October 18 Letter of Understanding has nothing to do with the New York Dock Conditions, but instead addresses issues of seniority and job assignments found in traditional CBAs.

³ This issue actually first surfaced in connection with filling assignments at Jefferson City, Missouri. As was the case for Dexter, UP was assigning junior engineers in the St. Louis Hub who were generally residing and working in St. Louis, to the outside assignment at Jefferson City. The assignment often required the engineer to move to Jefferson City or temporarily rent an apartment, etc., while working there. At the same time, there were other engineers residing at Jefferson City pursuant to a reverse lodging arrangement. These engineers were being allowed

D. Origin of the Instant Dispute: The 2003 Force Assignment of an Engineer to Dexter

In August 2003, a junior St. Louis Hub engineer being force assigned to a vacancy at Dexter questioned UP's Crew Management Services ("CMS") about whether he was the proper engineer to be assigned to that vacancy in light of the October 18 Letter of Understanding. He contended that an engineer residing near Dexter under the "reverse lodging" arrangement should be used to fill the position instead of him. Declaration of Robbin Rock, Ex. D, ¶ 2.

CMS reviewed the issue with Robbin D. Rock, UP's Director - Labor Relations. Coincident with his investigation, Mr. Rock received a telephone call from one of BLET's Local Chairmen at Dexter, Mr. Brad C. Thompson. Messrs. Rock and Thompson discussed the matter. Mr. Rock thereafter concluded that, under the October 18 Letter of Understanding, UP should not force St. Louis or Salem-based engineers to fill positions onto "extra board[s], locals or other road assignments (including the Dexter - Memphis pool)" at Dexter when there were engineers residing at or near Dexter under the "reverse lodging" arrangement. Mr. Thompson also stated that if any other junior engineers had been forced from St. Louis, they should be released and a Dexter engineer assigned. Rock Dec., ¶¶ 4-5. Accordingly, Mr. Rock instructed CMS to release any engineers that had been improperly forced to Dexter, and to fill such positions with engineers residing near Dexter under the "reverse lodging" arrangement. Rock Dec., ¶ 6.

to remain and work in Jefferson City even though the home terminal for the St. Louis - Jefferson City run was in St. Louis. In a Letter of Understanding dated January 20, 1999 (Ex. C), UP and BLET agreed that before UP would force assign a junior engineer from elsewhere in the St. Louis Hub to a position in Jefferson City, the junior engineer in the St. Louis-Jefferson City freight pool residing in Jefferson City (and who was receiving the "reverse lodging" benefits) would be assigned to the position.

E. BLET's Claims

On October 23, 2003, BLET filed a claim under New York Dock over the Dexter forced assignments. October 23, 2003, Letter from Charles Rightnowar to Roland Watkins, Ex. E. Subsequently, BLET proposed four substantive issues for determination, including whether the forced assignment of St. Louis engineers to certain assignments in Dexter before the situation was corrected by UP, or the subsequent forced assignment of Dexter engineers to those same assignments in Dexter after the situation was corrected by UP, violated either the October 18 Letter of Understanding "or any other BLE Agreement." April 26, 2004, Letter from Charles Rightnowar to Terry Olin, Ex. F, at 1.

UP objected to the appointment of a New York Dock arbitrator in that the parties' dispute fell outside the established jurisdictional boundaries for arbitration under Article I, § 11 of the New York Dock Conditions. January 22, 2004, Letter from Terry Olin to Roland Watkins, Ex. G; July 13, 2004, Letter from Terry Olin to Charles Rightnowar, Ex. H. In its submission to the arbitrator (a copy of which was submitted by BLET to the Board as Exhibit C to its Appeal), at 22-39, UP contended that jurisdiction over the dispute fell to the arbitration panels created by § 3 of the Railway Labor Act, 45 U.S.C. § 153, First. As UP noted, Article I, § 11 of New York Dock only allows arbitrators appointed thereunder to resolve disputes "with respect to the interpretation, application or enforcement" of the New York Dock Conditions. BLET's claims, however, raised no issue regarding New York Dock benefits, but instead raised routine seniority and bumping disputes. Id.

BLET, on the other hand, argued in its submission to the arbitrator (a copy of which was submitted by BLET to this Board as Exhibit B to its Appeal) that jurisdiction under New York Dock was much broader. In BLET's view, because the October 18 Letter of Understanding

amended Side Letter No. 11, and because Side Letter No. 11 was a side letter to the St. Louis Hub Agreement that contained New York Dock terms, the matter automatically raised a New York Dock dispute. BLET argued, as it does in this appeal, that all disputes over any document that references any agreement containing New York Dock language are automatically New York Dock disputes.

The parties held an arbitration hearing before Arbitrator McDonnell on August 24, 2004. UP placed before Arbitrator McDonnell the following procedural issue: "Is the matter of Union Pacific's alleged violation of the [October 18 Letter of Understanding] involving the assignment of proper rights engineers at Dexter, Missouri, a subject properly adjudicated pursuant to Section 11 of New York Dock?" McDonnell Award, Ex. I, at 2. In his April 17, 2004, Award, Arbitrator McDonnell, rejecting BLET's arguments, found that "the answer to that question is in the negative." Id. at 3. Arbitrator McDonnell found that Side Letter No. 11 was not a New York Dock agreement, but was instead simply a side agreement that affected employees' standard working conditions and related benefits. Therefore, given that Arbitrator McDonnell's only authority was under New York Dock, he found that he did not have jurisdiction to reach the merits of the parties' dispute. Id. at 3-4. BLET now appeals Arbitrator McDonnell's decision on this jurisdictional issue.

Significantly, while it was pursuing its New York Dock claims, BLET also filed claims against UP under the parties' traditional CBA. A total of at least 185 claims have been filed, and BLET continues to pursue these claims in the usual manner. See Ex. J. These claims will, at some point, become eligible for arbitration under § 3 of the RLA. This conduct shows that BLET truly understands that the claims that it forwarded to Arbitrator McDonnell are not New

York Dock disputes, but are instead matters that have to be resolved in RLA arbitration. Clearly, this dispute cannot be ripe for adjudication in both forums.

ARGUMENT

This Board's review of the McDonnell Award is governed by the Board's decision in Chicago & N.W. Transp. Co. – Abandonment, 3 I.C.C.2d 729 (1987), aff'd sub nom. International Bhd. of Elec. Workers v. I.C.C., 862 F.2d 330 (D.C. Cir. 1988) ("Lace Curtain"). Under Lace Curtain, the Board "defers to an arbitration panel's decision" and limits its review to two situations: (a) where there is a "recurring or otherwise significant issues of general importance regarding the interpretation of our labor conditions." Burlington N. Inc. – Control and Merger – Santa Fe Pac. Corp., Finance Docket No. 32549 (Sub No. 23) (Arbitration Review) (September 23, 2002) (reported at 2002 WL 31117574, at *2); and (b) where the arbitrator's award is irrational, fails to draw its essence from the imposed labor conditions, or exceeds the arbitrator's authority thereunder. Id.

BLET's appeal does not even attempt to contend that Arbitrator McDonnell's Award raises any "recurring or otherwise significant issue" under New York Dock. Thus, to gain Board review, BLET must show that the McDonnell Award is irrational, fails to draw its essence from New York Dock, or exceeded his authority.

As addressed below, BLET's appeal cannot meet these standards. The issues before Arbitrator McDonnell, even as framed by the BLET, had absolutely nothing to do with the interpretation of the New York Dock Conditions. Rather, the issue was the filling of vacant assignments in Dexter in 2003 – years after the UP/SP merger was fully implemented – under the October 18 Letter of Understanding. Arbitrator McDonnell made completely proper factual determinations – that the issues and letter agreements before him raised no question relating to

any provision of New York Dock. Given these findings and the language of Article I, § 11 limiting his jurisdiction to disputes involving the “interpretation, application or enforcement” of New York Dock, Arbitrator McDonnell’s conclusion that the matter must be arbitrated under the RLA, and not under New York Dock, is completely proper and cannot be disturbed under Lace Curtain review.

A. The McDonnell Award is Consistent with the Plain Language of Article I, § 11 of the New York Dock Conditions

Under 49 U.S.C. § 11326, the Board, in approving certain railroad merger transactions, is required to impose labor protection to safeguard railroad employees adversely effected thereby. In the case of the UP-SP merger, the Board imposed the New York Dock Conditions. Under New York Dock, among other things, employees who lost their jobs due to the UP-SP merger would receive dismissal allowances, employees whose pay was reduced due to the UP-SP merger would receive displacement allowances, and employees who were required to relocate would receive relocation benefits. Under Article I, § 4 of New York Dock, UP was required to negotiate an “implementing agreement” with BLET to effectuate the payment of New York Dock benefits and to address operational changes necessary to realize the service efficiencies and public benefits of the UP-SP merger.

Inevitably, some disputes will exist regarding whether and how much benefits are due employees allegedly affected by mergers. Therefore, Article I, § 11, of New York Dock provides an arbitral mechanism for resolving such disputes. However, the arbitral mechanism created by Article I, § 11, is limited in scope and does not supplant the grievance and arbitration mechanisms existing under the RLA. Instead, New York Dock arbitration is limited to true New York Dock issues. The limited jurisdiction of a New York Dock arbitrator is made clear by the language of Article I, § 11, which provides: “In the event the railroad and its employees or their

authorized representatives cannot settle any dispute or controversy **with respect to the interpretation, application or enforcement of any provision of this appendix**, except Sections 4 and 12 of this Article I, within 20 days after the dispute arises; it may be referred by either party to an arbitration committee.” (emphasis added).

Thus, a New York Dock arbitrator does not have plenary jurisdiction to resolve all disputes over the interpretation, application, or enforcement of any and all agreements between carriers and unions. Rather, only disputes that involve the New York Dock Conditions themselves are subject to arbitration under Article I, § 11. On the other hand, if a dispute does not involve the “interpretation, application or enforcement” of a provision of New York Dock, a New York Dock arbitrator lacks jurisdiction over the matter.

The dispute forwarded by BLET and submitted to Arbitrator McDonnell clearly raises no question concerning the “interpretation, application or enforcement” of any provision of New York Dock. In its appeal, BLET cites no provision of New York Dock that is remotely implicated by the parties’ dispute. Instead, the dispute is nothing more than an ordinary job assignment grievance. Given the language of Article I, § 11, it is impossible to find that Arbitrator McDonnell was irrational in concluding that he lacked jurisdiction over the dispute, as is required for Board review under Lace Curtain.

Indeed, the manner in which BLET itself described the dispute before Arbitrator McDonnell is quite telling. In BLET’s correspondence to the National Mediation Board requesting the appointment of an arbitrator, BLET stated that the issue was:

the Carrier’s improper, forced reassignment of Engineers at Dexter, Missouri, from the St. Louis-Dexter and Salem-Dexter pools, to the extra board at Dexter, Missouri, and the improper, forced reassignment of the subsequently, improperly displaced extra Engineers at Dexter, Missouri, to assignments at other locations, and the improper, forced reassignments of St. Louis, Missouri, and Dupo, Illinois, Engineers to Dexter, Missouri, with the subsequent, improper displacement of

Engineers at Dexter, Missouri, improperly returned to train service, all in violation of the October 18, 1999 Agreement

Ex. E. Noticeably absent is any mention of any provision of New York Dock or any benefit provided thereunder.

The same is true of the issues that BLET placed before Arbitrator McDonnell:

1. Whether the Carrier violated the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger St. Louis Hub Agreement, or any other BLE Agreement, by forcing Engineers from the St. Louis-Dexter and Salem-Dexter freight pools to the Extra Board at Dexter, Missouri?
2. If so, what shall the remedy be?
3. Whether the Dexter Extra Board Engineers displaced by the Carrier's action in Question No 1, that were forced to assignments at other locations, such as St. Louis, Missouri, and Dupo, Illinois, were forced-assigned in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger St. Louis Hub Agreement?
4. If so, what is the remedy?
5. Whether the forced-assignment of Engineers from St. Louis, Missouri and Dupo, Illinois, to assignments at Dexter, Missouri, violated the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Merger St. Louis Hub Agreement?
6. If so, what shall the remedy be?
7. Whether those Engineers improperly displaced at Dexter, Missouri, by the Engineers forced-assigned to that location by the Carrier's actions in Questions Nos. 1 and 5, and were subsequently forced to assignments at Trainmen, were so assigned in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger St. Louis Hub Agreement?
8. If so, what shall the remedy be?

Ex. F. Again, these issues raise absolutely no question concerning the "interpretation, application or enforcement" of any provision of New York Dock. Therefore, as Arbitrator McDonnell properly ruled, they are outside the scope of arbitration under Article I, § 11, and must be resolved in arbitration under § 3 of the RLA.⁴

⁴ Ignore the part of his Award in which Arbitrator McDonnell specifically answered in the negative the question of whether he had jurisdiction over the dispute, BLET attempts to criticize the McDonnell Award by creating a straw man. BLET refers to one part of one sentence of the McDonnell Award, which states that "Side Letter No. 11 dated

B. Consistent with the McDonnell Award, BLET Has Progressed Claims Under the October 18 Letter of Understanding Under § 3 of the RLA

In fact, BLET has repeatedly acknowledged that § 3 of the RLA is the appropriate mechanism for resolving its dispute with UP over the assignment of engineers in Dexter. As discussed above, BLET has filed and appealed approximately 185 claims on behalf of engineers allegedly affected by UP's actions under the parties' CBA. Ex. J. In each case, BLET has progressed these claims under the rules provided in the CBA and, even after the McDonnell arbitration panel was established and the arbitration hearing was held, has continued to handle these time claims in accordance with the parties' CBA. In due course, these matters will all be arbitrated under § 3 of the RLA if requested by BLET.

Thus, for instance, in correspondence dated June 21, 2004, General Chairman Rightnowar wrote UP's designated officer for receiving appeals under the CBA and identified several hundred claims he wished to schedule for a "general level conference" on June 28, 2004.⁵ Ex. K. Mr. Rightnowar's claim docket included a listing of approximately 100 claims relating to the assignment of engineers at Dexter. Attachment to Ex. K, at 15-19.

BLET's actions speak louder than its words. These actions confirm that it recognizes this dispute must be handled under the grievance resolution machinery of § 3 of the RLA and the

April 15, 1998, does not find its genesis in the Merger Implementing Agreement, but rather, stands for what it is; a side letter." BLET argues that this clause is incorrect because Side Letter No. 11 was executed at the same time as, and refers to, the St. Louis Hub Agreement. BLET is being overly literal. Obviously, Arbitrator McDonnell did not mean that Side Letter No. 11 had nothing to do with the St. Louis Hub Agreement; he clearly recognized that Side Letter No. 11 was a side letter to that Agreement. When one reads the entire McDonnell Award, it becomes clear that what Arbitrator McDonnell was saying was that Side Letter No. 11 did not "finds its genesis" in the portions of the St. Louis Hub Agreement that implemented the New York Dock Conditions. Instead, as the Award states, Side Letter No. 11 "stands for what it is," a side letter that deals exclusively with rights and responsibilities of employees having nothing to do with labor protection, and that are therefore outside of the scope of arbitration under the plain language of Article I, § 11 of New York Dock.

⁵ The "general level conference" is the final stage of the on-property handling before the matter is submitted to arbitration under § 3 of the RLA.

claim-handling rule contained in the CBA. Arbitrator McDonnell saw this fact as well, and properly ruled that he had no jurisdiction to resolve the dispute.

C. BLET's Argument That the Matter Raises a New York Dock Dispute Simply Because Side Letter No. 11 was a Side Letter to a New York Dock Agreement is Incorrect

BLET's appeal makes one basic argument. Although it fails to cite any provision of New York Dock that is implicated by the issues it put before Arbitrator McDonnell, BLET contends that because the October 18 Letter of Understanding amended Side Letter No. 11, and because Side Letter No. 11 was signed at the same time as the St. Louis Hub Agreement that addresses, among many other things, benefits under New York Dock, the matter raises a New York Dock dispute. BLET therefore suggests that a mechanical, bright-line rule exists under which any dispute involving any union-management agreement that even refers to an agreement containing terms relating to New York Dock, is automatically a New York Dock dispute. BLET's mechanical approach cannot stand.

First, and most obviously, BLET's position is contrary to the language of Article I, § 11 of New York Dock. As discussed above, Article I, § 11 only grants New York Dock arbitrators authority to decide disputes concerning the "interpretation, application or enforcement" of New York Dock itself. BLET's position would rewrite this provision to provide jurisdiction to New York Dock arbitrators over any dispute that concerned the interpretation, application or enforcement of any agreement that referenced any agreement that contained any New York Dock language. Had the framers of New York Dock intended arbitrators appointed thereunder to become embroiled in all disputes arising out of the provisions of any agreement that referenced an agreement containing New York Dock language, they would have clearly said so. Instead, Article I, § 11 was written to constrain the jurisdiction of New York Dock arbitrators to matters that relate specifically to the interpretation, application or enforcement of some provision of New

York Dock. Given that no provision of New York Dock was implicated by the issues placed before Arbitrator McDonnell, he correctly found that he lacked jurisdiction over the matter.

Second, BLET continues to ignore the fact that the agreement truly at issue in this case – the October 18 Letter of Understanding that addresses when engineers can be force assigned at Dexter – was not a New York Dock implementing agreement. The October 18 Letter of Understanding does not discuss any of the benefits provided under New York Dock. Ex. B. It simply addresses the question of which engineers must fill assignments in Dexter, Missouri. Similarly, Side Letter No. 11, which the October 18 Letter of Understanding amended, is a just that – a side letter. It too addresses none of the benefits provided employees under New York Dock. Ex. A, at 45-47.

Third, as discussed above, the St. Louis Hub Agreement is a hybrid. Part of it addresses New York Dock benefits; part of its addresses rates of pay, rules, and working conditions that are, in fact, simply a traditional CBA subject to the RLA's dispute resolution process. Thus, it contains terms that address New York Dock benefits, such as terms that define when employees are eligible for displacement or dismissal allowances, as well as relocation benefits. Ex. A, at 25-26. However, it also contains many provisions having nothing to do with New York Dock, such as what extra boards will exist. Ex. A, at 19-21. Even if one could accept BLET's argument that Side Letter No. 11 and the October 18 Letter of Understanding are part of the St. Louis Hub Agreement, the mere fact that the St. Louis Hub Agreement contains some language implementing the New York Dock Conditions does not make disputes over the non-New York Dock issues addressed therein subject to arbitration under Article I, § 11 of New York Dock. Again, this explains why Article I, § 11(a) of New York Dock does **not** grant New York Dock arbitrators jurisdiction over all disputes that arise under New York Dock implementing

agreements. Instead, Article I, § 11(a) only grants jurisdiction over disputes concerning the “interpretation, application or enforcement” of the New York Dock Conditions.

Finally, precedent rejects BLET’s position that every dispute that arises under a New York Dock implementing agreement is automatically subject to the jurisdiction of a New York Dock arbitrator. In Delaware & Hudson Ry. Co. – Lease and Trackage Rights Exemption – Springfield Term. Ry. Co., 8 I.C.C.2d 839 (1992), the ICC faced a situation where the parties had a dispute regarding whether an Article I, § 4, arbitrator-issued implementing agreement was intended to override a particular provision in a CBA. The carrier delayed implementation of the ICC-approved transaction pending resolution of the matter.⁶ The ICC found that this dispute – which clearly addressed the “interpretation, application or enforcement” of the part of ICC’s protective conditions that authorized the parties’ implementing agreement to override their CBA when necessary to realize the efficiencies of the approved transaction – was within the jurisdiction of a labor protection arbitrator. However, in doing so, the ICC specifically rejected the mechanical argument, made by BLET in this appeal, that a labor protection arbitrator has jurisdiction over all disputes relating to an implementing agreement. Instead, the ICC recognized that “at some future time [its] jurisdiction [would] cease, and the parties will be required to resort to the RLA to resolve disputes” 8 I.C.C.2d at 845.⁷

⁶ Springfield Term. arose under the Mendocino Coast labor conditions that apply to lease and trackage rights transactions. Mendocino Coast Ry. Co. – Trackage Rights – BN, 360 I.C.C. 653 (1980). The terms of Article I, § 11 of Mendocino Coast are the same as those found in Article I, § 11 of NYD. As such, the ICC’s analysis in Springfield Term. applies fully in this case.

⁷ The only case cited by BLET to support its mechanical rule is Burlington N. Inc. – Control and Merger – Santa Fe Pac. Corp., Finance Docket 32549 (Sub. No. 23) (Arbitration Review) (Sept. 23, 2002) (reported at 2002 WL 31117574). Contrary to BLET’s claim, the Board most certainly did not hold in Burlington N. that all disputes over any language in any New York Dock implementing agreement are always within the jurisdiction of an Article I, § 11 arbitrator. Instead, the language cited by BLET was simply the Board’s introductory discussion providing a background on the general application of New York Dock. In fact, the entire dispute in Burlington N. arose in the context of arbitration under Article I, § 4 of New York Dock, which addresses the arbitration of the substantive terms of an implementing agreement, a completely different subject than the Article I, § 11 issue posed herein.

BLET's mechanical, bright-line approach is plainly inconsistent with Springfield Term. Obviously, if the kind of dispute at issue in Springfield Term could one day fall outside the scope of New York Dock arbitration, BLET's position that every dispute arising out of a New York Dock implementing agreement is subject to arbitration under New York Dock is incorrect. Moreover, as discussed above, BLET's attempt to apply its incorrect mechanical rule to this dispute – which does not address any provision of New York Dock, does not affect UP's ability to realize the efficiencies of the Board-approved merger transaction, and which arose under a letter agreement that contain no New York Dock language – is even more absurd. BLET has failed to show that Arbitrator McDonnell's ruling that jurisdiction over the parties' dispute lies under § 3 of the RLA was irrational, and its appeal should be rejected.

CONCLUSION

BLET's appeal ignores the jurisdictional limits placed on New York Dock arbitrators by Article I, § 11. BLET is completely unable to make the required showing that the dispute placed before Arbitrator McDonnell involved the "interpretation, application or enforcement" of any provision of New York Dock. Instead, the questions BLET is raising must be arbitrated under § 3 of the RLA. Indeed, BLET has progressed claims over the same subjects it placed before Arbitrator McDonnell under the RLA. UP respectfully requests that the Board decline to review Arbitrator McDonnell's Award and allow the parties to complete the RLA dispute resolution procedures.

Respectfully submitted,

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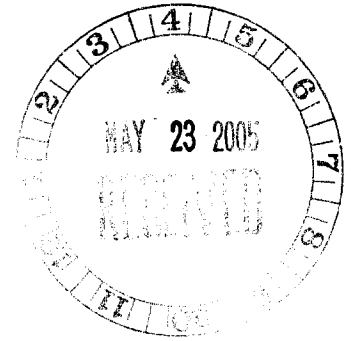
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served, via United States mail, first class postage prepaid, this 23rd day of May 2005 on Thomas H. Geoghegan & Carol Nguyen, Despres, Schwartz & Geoghegan, 77 West Washington St., Suite 711, Chicago, IL 60602.



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(Arbitration Review)

CARRIER'S REPLY TO PETITIONER'S APPEAL

APPENDIX

Respectfully submitted,

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Attorneys for Carrier

A

MERGER IMPLEMENTING AGREEMENT (St. Louis Hub)

between the

**UNION PACIFIC RAILROAD COMPANY
SOUTHERN PACIFIC RAILROAD COMPANY**

and the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

PREAMBLE

The U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and the Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") in Finance Docket 32760.

In order to achieve the benefits of operational changes made possible by the transaction, and to consolidate the seniority of all firemen working in the territories covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement, in such hub,

IT IS AGREED:

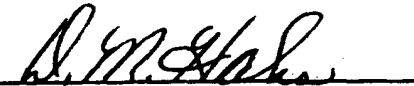
1. The parties acknowledge that an Implementing Agreement covering the consolidation of all firemen in the St. Louis Hub under one common collective bargaining agreement for such hub will be executed as a result of Carrier's notices served in such territories on October 6, 1997.
2. The parties agree that firemen who are currently covered by the SSW collective bargaining agreement will be considered fully covered by the terms of the Implementing Agreement which is negotiated/arbitrated and implemented pursuant to said October 6, 1997 notice. All rights and benefits set forth therein shall apply equally to such firemen on the same basis as to all other firemen covered by said Implementing Agreement/Award.

3. Upon implementation of the Implementing Agreement for the St. Louis Hub, the firemen referred to herein shall come under the jurisdiction of the collective bargaining agreement which is designated therein.
4. This Agreement implements the merger of the Union Pacific and Southern Pacific Lines railroad operations in the area covered by Notice dated October 10, 1997.

Signed at Omaha, NE, this 22nd day of July, 1998.


**FOR THE BROTHERHOOD
OF LOCOMOTIVE ENGINEERS:**

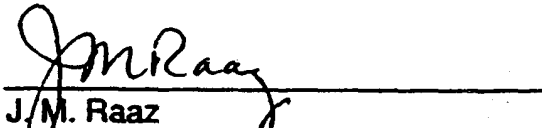

D. E. Thompson
General Chairman, BLE


D. M. Hahs
Vice President, BLE


J. L. McCoy
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FOR THE CARRIERS:


M. A. Hartman
General Director-Labor Relations


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**MERGER
IMPLEMENTING AGREEMENT
(St. Louis Hub)**

between the

**UNION PACIFIC RAILROAD COMPANY
Southern Pacific Transportation Company
and the**

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

PREAMBLE

The U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and the Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") in Finance Docket 32760. In approving this transaction, the STB imposed New York Dock labor protective conditions. Copy of the New York Dock conditions is attached as Attachment "A" to this Agreement.

Subsequent to the filing of Union Pacific's application but prior to the decision of the STB, the parties engaged in certain discussions which focused upon Carrier's request that the Organization support the merger of UP and SP. These discussions resulted in the parties exchanging certain commitments, which were outlined in letters dated March 8(2), March 9 and March 22, 1996.

On October 10, 1997, the Carriers served notice of their intent to merge and consolidate operations generally in the following territories:

Union Pacific:	St. Louis/Dupo to Dexter via Chester Sub
	Dexter to Memphis
	St. Louis/Dupo to Poplar Bluff/Dexter via DeSoto Sub
	Salem to Dexter

Findlay Junction to Metropolis

Gorham to Benton Junction

Chester to Mt. Vernon

St. Louis/Dupo to Chicago via Pana (not including Chicago Terminal Complex)

UP (former MP) lines governed by the Missouri and Illinois Agreements

St. Louis/Dupo to South Pekin (not including South Pekin)

St. Louis/Dupo to Jefferson City

St. Louis Terminal

Southern Pacific:
(SSW/SPCSL)

St. Louis/East St. Louis to Dexter

St. Louis/East St. Louis to Bloomington (not including Bloomington)

St. Louis/East St. Louis to Jefferson City

St. Louis Terminal

Dexter to Memphis

Pursuant to Section 4 of the New York Dock protective conditions, in order to achieve the benefits of operational changes made possible by the transaction and to modify collective bargaining agreements to the extent necessary to obtain those benefits,

IT IS AGREED:

ARTICLE I - WORK AND ROAD POOL CONSOLIDATIONS

The following work/road pool consolidations and/or modifications will be made to existing runs.

A. Zone 1 Seniority District

1. Territory Covered: St. Louis/East St. Louis/Dupo to Dexter via Chester Sub

St. Louis/East St. Louis/Dupo to Poplar Bluff/Dexter via DeSoto Sub

Dexter to Memphis

Salem to Metropolis (not including Salem)

Salem to Dexter (not including Salem)

Chester to Mt. Vernon

Gorham to Benton Junction

UP (former MP) lines governed by the M&I labor agreements

St. Louis/East St. Louis/Dupo to Jefferson City

The above includes all UP, SSW and SPCSL main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight crews from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

2. All former UP Dupo-Poplar Bluff and former SSW E. St. Louis-Illmo/Jonesboro pool freight service shall be combined into one (1) pool operating between St. Louis and Dexter, with St. Louis as the home terminal.
 - a. The pool described above shall be slotted, and Attachment "B" lists the slotting order for the pool. Former UP and SSW engineers shall have prior rights to said pool turns as set forth in said Attachment "B". The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement as set forth in said Attachment "B". If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.

- b. Engineers in this pool shall under normal conditions be confined to through freight service between St. Louis and Dexter, and will not be inducted into other service off the Chester Sub which is not connected with pool freight service in that corridor. Hours of Service relief of trains operating St. Louis to Dexter may be protected by the extra board at Dexter if the train has reached Illmo or beyond. If the extra board is exhausted, an away-from-home engineer may be used, and will thereafter either be deadheaded home or placed first out for service on his rest. Such trains which have not reached Illmo shall be protected on a straightaway move by a home terminal pool engineer at St. Louis. Hours of Service relief of trains in this pool operating from Dexter to St. Louis may be protected by the extra board at St. Louis if the train has reached Illmo or beyond; otherwise, a rested away-from-home terminal engineer at Dexter shall be used on a straightaway move to provide such relief.
- c. At Dexter, away from home terminal engineers called to operate through freight service to St. Louis may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Dexter to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (½) day at the basic pro rata through freight rate for this service in addition to the district miles of the run. If time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.
- d. At Dexter the handling of New Madrid and Sikeston coal trains shall be consolidated into a single unassigned pool. This pool will be advertised and assigned based upon Zone 1 prior rights seniority, and thereafter from the common roster.
- e. Engineers of the North Little Rock/Pine Bluff Hub have certain rights, as defined in the merger implementing agreement for that hub, to receive their through freight trains up to twenty-five (25) miles on the far side (northward) of the terminal and run back through Dexter without claim or complaint from any other engineer.
- f. The terminal limits of Dexter shall extend between Mile Posts 46.0 and 53.0 on the SSW Illmo Subdivision and to Mile Post 188.0 on the UP Chester Subdivision.

- g. Effective with implementation of the freight pool described in Article I.A.2. above, Illmo and Poplar Bluff shall cease to be considered a home terminal for pool service. As part of the interim arrangements negotiated in the North Little Rock/Pine Bluff Merger Implementing Agreement, it was agreed that engineers at Illmo and Poplar Bluff would be given certain options to relocate to Dexter rather than St. Louis. The specific details of such options are set forth in Side Letter No. 11 to this Implementing Agreement.
- h. Engineers protecting through freight service in the St. Louis - Dexter pool described in Article I.A.2 above shall be provided lodging at Dexter pursuant to existing agreements, and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.
- i. Pursuant to Side Letter No. 11 to this Agreement, engineers protecting through freight service in the St. Louis - Dexter pool described in Article I.A.2 above shall be afforded lodging at St. Louis, if requested, pursuant to the terms of this Agreement. The option to exercise "reverse lodging" at the home terminal must be initiated with CMS within thirty (30) days following the date of implementation of this Agreement and remains in effect for a one (1) year period, renewable annually thereafter unless or until this arrangement is terminated by agreement between the parties pursuant to Side Letter No. 11. The Carrier will, to the extent practicable, give such engineers a two-hour and thirty minute (2'30") call for service, but no penalty will be applied to the Carrier or the engineer if such is not afforded in any instance. These provisions do not apply to employees hired on or after the date of this Agreement.
- j. Engineers protecting through freight service in the St. Louis to Dexter pool, who have elected the "reverse lodging" option described in i. above shall have lay off privileges at the away from home terminal consistent with the designated collective bargaining agreement rules and practices. When an engineer lays off at the away from home terminal, such vacancy will be filled by the extra board at Dexter.
- k. Engineers protecting through freight service in the St. Louis to Dexter pool, who have elected the "reverse lodging" option described in i. above shall be paid HAHT at the reverse terminal pursuant to this Implementing Agreement. All other provisions of the designated collective bargaining agreement regarding HAHT remain unchanged.

NOTE: The provisions of Articles I.A.2.i, I.A.2.j., and I.A.2.k. above shall only apply to engineers residing in Poplar Bluff or Illmo or vicinity, and protecting service at such locations or vicinity, on October 10, 1997 (date of Carrier's St. Louis Hub Notice).

- I. Carrier shall advertise and operate an unassigned service pool (known on the former UP as "Pool 1") to protect all unassigned Zone 1 service in Illinois. The home terminal of this pool shall be St. Louis. Pre-merger rules and practices pertaining to the former UP "Pool 1" are adopted herein, except as specifically amended in this Implementing Agreement, and as additionally set forth below:
 - (1) The scope of territory covered by this pool shall be all of Zone 1 as defined in this Agreement on the Illinois side of the Mississippi, and the Chester Sub to Dexter, as described below.
 - (2) The engineers in this pool shall not be used to supplant through freight crews or otherwise handle through freight trains between St. Louis and Dexter; however, in the course of handling normal Pool 1 unassigned business, Pool 1 engineers may handle their trains as far south as Dexter. Engineers under such circumstances may either be tied up at Dexter for rest and later used for Pool 1 service, or shall be deadheaded to the home terminal. It is understood such Pool 1 engineers may not be injected into the St. Louis-Dexter pool for work back to St. Louis in through freight service, except when there are no rested pool or extra engineers available at Dexter.
3. All UP and SSW pool freight service between Dexter and Memphis will be combined into one (1) pool with Dexter as the home terminal. Memphis will serve as the away from home terminal. Engineers operating between Dexter and Memphis may utilize any combination of UP or SSW trackage between such points. The former UP St. Louis (Dupo) to Memphis ID Agreement is suspended.
 - a. The pool described above shall be slotted and Attachment "C" lists the slotting order for the pool. Former UP engineers shall have prior rights to said pool turns as set forth in said Attachment "C". The Carrier and the Organization shall mutually agree on the number of turns subject to this

arrangement as set forth in said Attachment "C". If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.

- b. Hours of Service relief of trains in this pool operating from Dexter to Memphis shall be protected by the extra board at Memphis if the train has reached Wynne or beyond. If this extra board is exhausted or no longer in existence, an away-from-home terminal engineer may be used and will thereafter either be deadheaded home or placed first out for service on their rest. Such trains which have not reached Wynne shall be protected on a straightaway move by a home terminal pool engineer at Dexter. Trains operating Memphis to Dexter may be protected by the extra board at Dexter if the train has reached Jay Siding or beyond (on the former SSW) or Corning (on the UP Hoxie Subdivision); otherwise, a rested away-from-home terminal engineer at Memphis may be used to provide such relief. If none rested and available, a home terminal pool engineer at Dexter may be used in turnaround service to provide such relief, and when so used, will be placed first out on his rest for additional service.
- c. In addition to protecting pool freight service between Dexter and Memphis, a sufficient number of engineers shall be maintained at Dexter to protect all other service requirements at or in the vicinity of said location, including but not limited to:
 - (1) Local, road switcher, yard, work, wreck, or any other service headquartered at or in the vicinity of Poplar Bluff, including operations on the DeSoto Subdivision between Poplar Bluff and Bismarck.
 - (2) Local, road switcher, yard, work, wreck, or any other service headquartered at or in the vicinity of Dexter, including Jonesboro, Illmo, Paragould and Malden.
 - (3) All Hours of Service relief of pool freight engineers within a fifty (50) mile radius of Dexter in any direction which are not performed by road engineers under a 25-mile zone provision.
 - (4) New Madrid coal trains operating between Dexter and the power plant, including handling thereof from/to Illmo when stored or staged at that location.

- (5) Sikeston coal trains operating between Poplar Bluff and Sikeston.
 - (6) Engineers in the Dupo/Dexter and Salem/Dexter pools laying off at Dexter while exercising "reverse layoff" privileges at Dexter.
4. All UP and SSW pool freight service between St. Louis and Jefferson City will be combined into one (1) pool with St. Louis as the home terminal. Jefferson City will serve as the away from home terminal. Engineers operating between St. Louis and Jefferson City may utilize any combination of UP or SSW trackage between such points.
- a. The pool described above shall be slotted, and Attachment "D" lists the slotting order for the pool. Former UP and SSW engineers shall have prior rights to said pool turns as set forth in said Attachment "D". The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement as set forth in said Attachment "D". If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.
 - b. Hours of Service relief of trains in this pool operating from St. Louis to Jefferson City may be protected by the extra board at Jefferson City if the train has reached Hermann or beyond. If the extra board is exhausted, an away-from-home terminal engineer may be used and will thereafter either be deadheaded home or placed first out for service on their rest. Such trains which have not reached Hermann shall be protected on a straightaway move by a home terminal pool engineer at St. Louis. Hours of Service relief of trains in this pool operating from Jefferson City to St. Louis may be protected by the extra board at St. Louis if the train has reached Washington; otherwise, a rested away-from-home terminal engineer at Jefferson City shall be used on a straightaway move to provide such relief.
 - c. At Jefferson City, away-from-home terminal engineers called to operate through freight service to St. Louis may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Jefferson City to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (1/2) day at the basic pro rata through freight rate for this service in addition to the district miles of the run.

If time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.

- d. Engineers of the Kansas City Hub may have certain rights to be defined, if any, in the Implementing Agreement for that hub, to receive their through freight trains up to twenty-five (25) miles on the far side of the terminal and run back through Jefferson City without claim or complaint from any other engineers.
- e. It is the intent of the parties that the territory between Jefferson City and Kansas City (not including Jefferson City) and the work and employees associated therewith shall belong to the Kansas City Hub. Effective upon implementation of this Agreement, all work within this territory shall be performed by such engineers who were home terminated at Jefferson City on the date of the notice served for this hub and shall not be under the jurisdiction of the St. Louis Hub in any manner.
 - (1) The integration of the above engineers and work into the Kansas City Hub shall be more definitively described in the merger Implementing Agreement covering such hub; however, the parties have agreed that the consolidated pool in this territory will be a slotted pool with prior rights UP and SSW engineers at Jefferson City maintaining prior rights to their respective pool slots.
 - (2) In the interim period between the implementation of this Agreement and a Merger Implementing Agreement for the Kansas City Hub, former SSW and UP engineers at Jefferson City shall be maintained on separate rosters and extra boards for purposes of continuing to protect their prior pools, assignments and extra service.
- f. All UP and SSW operations within the Jefferson City terminal limits shall be consolidated into a single operation. The terminal limits of Jefferson City shall be the same as the pre-existing terminal limits on the UP (M.P.128-M.P.124.3).
- g. Engineers protecting through freight service in the St. Louis - Jefferson City pool described in Article I.A.4. above shall be provided lodging at Jefferson City pursuant to existing agreements, and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.

- h. Engineers protecting through freight service in the St. Louis to Jefferson City pool described in Article I.A.4. above shall be afforded lodging at St. Louis, if requested, pursuant to the terms of this Agreement. The option to exercise "reverse lodging" at the home terminal must be initiated with CMS within thirty (30) days following the date of implementation of this Agreement and remains in effect for a one (1) year period, renewable annually thereafter. This provision does not apply to employees hired on or after the date of this Agreement.
- i. Engineers protecting through freight service in the St. Louis to Jefferson City pool, who have elected the "reverse lodging" option described in h. above shall have layoff privileges at the away from home terminal consistent with the designated collective bargaining agreement rules and practices. When an engineer lays off at the away from home terminal, such vacancy will be filled by the extra board at Jefferson City.
- j. Engineers protecting through freight service in the St. Louis to Jefferson City pool, who have elected the reverse lodging option described in h. above shall be paid HAHT at the reverse terminal pursuant to this Implementing Agreement. All other provisions of the designated collective bargaining agreement regarding HAHT remain unchanged.

NOTE: The provisions of Articles I.A.4.h., I.A.4.i, and I.A.4.j. above shall only apply to engineers residing in Jefferson City vicinity, and protecting service at such location or vicinity, on October 10, 1997 (date of Carrier's St. Louis Hub Notice).

- k. In the event capital improvements in the future permit operation between Jefferson City and Labadie on a turnaround basis, it is understood that nothing in this Agreement would prohibit establishment of a pool headquartered at Jefferson City for such purpose. Employees protecting such pool would do so as a seniority move utilizing their prior rights Zone 1 seniority, and thereafter from the common roster.
5. The current UP Salem-Poplar Bluff ID Agreement shall be suspended upon implementation of this Agreement. In lieu thereof, the pool will operate from Salem to Dexter with Salem as the home terminal. Dexter will serve as the away from home terminal.

- a. The pool described above shall be slotted, and Attachment "E" lists the slotting order for the pool. Former MP and CEI engineers shall have prior rights to said pool turns as set forth in said Attachment "E". The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement as set forth in Attachment "E". If turns in excess of that number are established or any of such turns be unfilled by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.
- b. Inasmuch as Salem was the home terminal for all pool freight engineers with former UP Illinois and C&EI prior rights prior to the merger, such former UP Illinois and C&EI engineers assigned to this pool after implementation shall not be entitled to relocation benefits to Salem unless required to exercise seniority to this pool because they were unable to hold any position at their former location. It is understood the existing three hour (3'00") call arrangement for this pool at Salem will be continued.
- c. Hours of Service relief of trains operating Salem to Dexter may be protected by the extra board at Dexter if the train has reached Illmo or beyond. If this extra board is exhausted, a rested away-from-home terminal engineer may be used, and will thereafter either be deadheaded home or placed first out for service on their rest. Such trains which have not reached Illmo shall be protected on a straightaway move by a home terminal pool engineer at Salem. Hours of Service relief of trains in this pool operating Dexter to Salem may be protected by the extra board at Salem if the train has reached Benton (MP303) or beyond; otherwise, an away-from-home terminal engineer at Dexter shall be used on a straightaway move to provide such relief. If none rested and available, the Salem extra board may be used beyond Benton.
- d. At Dexter and Salem road crews called to operate pool freight service may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through the terminal without claim or complaint from any other engineer. When so used, the crew shall be paid an additional one-half (½) day at the basic pro rata through freight rate for this service in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.

- e. The terminal limits of Salem shall be the same as the pre-existing terminal limits on the UP.
- f. Engineers protecting through freight service in the Salem-Dexter pool described in Article I.A.5. above shall be provided lodging at Dexter pursuant to existing agreements, and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.
- g. Engineers residing at Poplar Bluff and Illmo protecting the Salem - Dexter (former Salem-Poplar Bluff) pool may continue to reside at Poplar Bluff and Illmo under a "reverse lodging" arrangement. Those engineers protecting through freight service in the Salem-Dexter pool described in Article I.A.5. above shall be entitled to preservation of such arrangement as more specifically described in Side Letter No. 11 to this Agreement. The provisions set forth in Articles I.A.2.i., I.A.2.j., and I.A.2.k. of this Agreement shall be applicable to such engineers who elect not to relocate to St. Louis or Salem.

B. Zone 2 - Seniority District

- 1. Territory Covered: St. Louis/East St. Louis/Dupo to Chicago via Pana (not including Chicago Terminal Complex)

St. Louis/East St. Louis/Dupo to South Pekin (not including South Pekin)

St. Louis/East St. Louis/Dupo to Bloomington (not including Bloomington)

Salem to Chicago via Villa Grove (not including Chicago Terminal Complex)

The above includes all UP/SSW/SPCSL main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight crews from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

- 2. All St. Louis to Villa Grove, St. Louis to South Pekin and St. Louis to Bloomington pool freight service shall be combined into one (1) pool with St. Louis as the home terminal. Villa Grove, South Pekin and Bloomington will serve as the respective away from home terminals. Engineers operating between St. Louis and Villa Grove, South Pekin

or Bloomington may utilize any combination of UP/SSW/SPCSL trackage between such points. Crews may also be transported between the destination terminals for the return trip to the home terminal, subject to the terms set forth in Side Letter No. 13.

- a. The pool described above shall be slotted, and Attachment "F" lists the slotting order for the pool. Former UP and SPCSL engineers shall have prior rights to said pool turns as set forth in said Attachment "F". The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement as set forth in said Attachment "F". If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.
- b. The existing agreement rules and practices which apply to the former St. Louis to Villa Grove/S. Pekin dual destination pool shall apply to the new three-destination pool established herein except as otherwise modified by this Implementing Agreement.
- c. The existing UP Salem to Villa Grove pool will be maintained under this Agreement with Salem as the home terminal. Villa Grove will serve as the away from home terminal.
- d. The existing UP Villa Grove to Chicago pool will be maintained under this Agreement with Villa Grove as the home terminal. Chicago will serve as the away from home terminal. As more specifically set forth in Article II - Seniority Consolidations hereof, a sufficient number of former SPCSL engineers home terminated at Bloomington on the date of the notice served for this hub shall be entitled to acquire Zone 2 prior rights seniority and transfer to Villa Grove to represent the former SPCSL (Bloomington to Chicago) equity in this through freight corridor.
- e. The current UP interdivisional pool operating between Salem and Chicago pursuant to Arbitration Award No. 553 shall be unaffected by this Implementing Agreement. The St. Louis-Chicago ID runs shall continue to operate as a separate pool so long as sufficient service exists to justify such pool. If not, such service shall be operated off the Zone 2 extra board as described in Article III.A.5.c. of this Agreement.
- f. (1) Hours of Service relief of trains operating St. Louis to Bloomington may be protected by the extra board at Bloomington, if in existence, if the train has reached Ridgley or beyond. If no extra board exists, such relief may be provided by a rested away-from-home engineer

at Bloomington, who will thereafter either be deadheaded home or placed first out for service on their rest. Such trains which have not reached Ridgley shall be protected on a straightaway move by a home terminal pool engineer at St. Louis. Hours of Service relief of trains operating Bloomington to St. Louis may be protected by the extra board at St. Louis if the train has reached Ridgley or beyond; otherwise, a rested away-from-home engineer at Bloomington shall be used on a straightaway move to provide such relief. If none rested and available, the St. Louis Zone 2 extra board may be used beyond Ridgley.

- (2) Hours of Service relief of trains operating St. Louis to S. Pekin may be protected by the extra board at S. Pekin, if in existence, if the train has reached Virden siding or beyond. If no extra board exists or it is exhausted, such relief may be provided by a rested away-from-home terminal engineer at S. Pekin, who will thereafter either be deadheaded home or placed first out for service on their rest. Such trains which have not reached Virden siding shall be protected on a straightaway move by a home terminal pool engineer at St. Louis. Hours of Service relief of trains operating S. Pekin to St. Louis may be protected by the extra board at St. Louis if the train has reached Virden siding or beyond; otherwise, a rested away-from-home engineer at S. Pekin shall be used on a straightaway move to provide such relief. If none rested and available, the St. Louis Zone 2 extra board may be used beyond Virden siding.
- (3) Hours of Service relief of trains operating St. Louis to Villa Grove may be protected by the extra board at Villa Grove, if in existence, if the train has reached Findlay Junction or beyond. If no extra board exists or it is exhausted, such relief may be provided by a rested away-from-home terminal engineer at Villa Grove, who will thereafter either be deadheaded home or placed first out for service on their rest. Such trains which have not reached Findlay Junction shall be protected on a straightaway move by a home terminal pool engineer at St. Louis. Hours of Service relief of trains operating Villa Grove to St. Louis may be protected by the extra board at St. Louis if the train has reached Findlay Junction or beyond; otherwise, a rested away-from-home engineer at Villa Grove shall be used on a straightaway move to provide such relief. If none rested

and available, the St. Louis Zone 2 extra board may be used beyond Findlay Junction.

- (4) Hours of Service relief of trains operating in ID service between St. Louis and Chicago or between Salem and Chicago shall be provided as set forth in Arbitration Award No. 553.

- g. At South Pekin, Bloomington, Villa Grove or Salem road crews called to operate pool freight service may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through the terminal without claim or complaint from any other engineer. When so used, the crew shall be paid an additional one half (½) day at the basic pro rata through freight rate in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.
- h. Engineers of the Chicago Hub may have certain rights to be defined, if any, in the Implementing Agreement for that hub, to receive their through freight trains up twenty-five (25) miles on the far side of the terminal and run back through South Pekin or Bloomington without claim or complaint from any other engineer.
- i. The terminal limits of Salem, South Pekin, and Villa Grove shall be the same as the pre-existing terminal limits. The Terminal limits of Bloomington shall be established by this Implementing Agreement as being MP 124.1 to MP 140.9 on the former SPCSL Springfield Subdivision.
- j. Engineers will be provided lodging at all of the away-from-home terminal locations comprehended by the operations described in Article I.B.2. above pursuant to existing agreements, and the Carrier shall provide transportation to engineers between the on/off duty locations and the designated lodging facilities.

C. St. Louis Terminal

- 1. All UP, SSW and SPCSL operations within the new St. Louis Terminal limits shall be consolidated into a single operation. The terminal includes all UP/SSW/SPCSL main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. All UP/SSW/SPCSL road crews may receive or leave their trains at

any location within the terminal and may perform work within the terminal pursuant to the applicable collective bargaining agreement, including national agreements. The Carrier will designate the on/off duty points for all yard crews, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.

2. All yard assignments operating within the St. Louis Terminal shall be considered Zone 1 assignments for purposes of the application of Article II hereof.
3. All UP, SSW and SPCSL rail lines, yards and/or sidings within the St. Louis Terminal will be considered as common to all engineers working in, into and out of St. Louis. Interchange rules are not applicable to intra-carrier moves within the terminal.
4. Terminal limits for the consolidated St. Louis terminal are as follows:

<u>UP</u>	<u>Mile Post</u>
DeSoto Subdivision	10.8
Sedalia Subdivision	8.0
Chester Subdivision	9.16
St. Louis Subdivision (former CNW)	144.0
Pana Subdivision	273.7

<u>SSW</u>	<u>Mile Post</u>
Eldon Line	19.0

SSW terminal limits shall be established as shown above.

<u>SPCSL</u>	<u>Mile Post</u>
Springfield Subdivision	252.1

SPCSL terminal limits are established by this Agreement.

- D. At all terminals the Carrier will designate the on/off duty points for all road engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
 - a. In view of the close proximity thereof, the yard offices at the Alton and Southern (A&S) and Dupo shall be considered interchangeable as on/off duty locations for road crews in through freight service. Home terminal engineers will be advised at time of call which of these

facilities they should report to for commencement of service. Engineers arriving at St. Louis on their return trip, if not yarding their train and tying up at the same office where they reported on their outbound trip, shall be transported to said original reporting location (A&S or Dupo). Engineers so transported shall remain on duty and under pay for the service trip until they have arrived and tied up at said original reporting location. ~~In addition, they shall be paid thirty (30) minutes at the basic pro rata through freight rate, separate and apart from the service trip.~~

- E. In all of the zones, when local, work, wreck, HOS relief or other such road runs are called or assigned which operate exclusively within the territorial limits of one of the zones established in this Agreement, such service shall be protected by engineers in such zone. If such run or assignment extends across territory encompassing more than one zone contemplated by this Agreement, it will be protected by engineers in the zone in which such service is home terminated.

ARTICLE II - SENIORITY CONSOLIDATIONS

- A. To achieve the work efficiencies and allocation of forces that are necessary to make the St. Louis Hub operate efficiently as a unified system, a new seniority district will be formed and a master Engineer Seniority Roster – UP/BLE St. Louis Merged Roster #1 – will be created for the engineers holding seniority in the territory comprehended by this Agreement on the effective date thereof. The new roster will be divided into two (2) zones as described in Articles I.A and I.B. above.
- B. Prior rights seniority rosters will be formed covering each of the two (2) zones outlined above. Placement on these rosters and awarding of prior rights to their respective zones shall be based on the following:
1. Zone 1 - This roster will consist of former SPCSL engineers with prior rights on SPCSL (Roster No. 310101), former SSW engineers with prior rights on SSW Jefferson City (Roster No. 311101), SSW Illmo (Roster No. 302101), SSW Eldon (Roster No. 306101), CEI-CNW (Roster No. 45101) and former UP engineers with prior rights on St. Louis Merged 1 (Roster Nos. 039111 and 040111), UP-MI East (Roster No. 046101) and UP-MI West (Roster No. 046102).
 2. Zone 2 - This roster will consist of former UP engineers with prior rights on CEI Villa Grove South (Roster No. 042101), CEI Villa Grove North (Roster No. 043101), CEI-CNW (Roster No. 045101), and SPCSL (Roster No. 310101).

- C. Seniority integration of the engineers from the above affected former rosters into one (1) common seniority roster will be done on a dovetail basis using the current date of seniority as a locomotive engineer.
- D. Entitlement to assignment on subject consolidated roster shall be by canvass of the employees contributing equity to each of the zones set forth herein.
- E. Any engineer working in the territories described in Article I. on the date of implementation of this Agreement, but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights. Engineers currently forced to this territory will be given a place on the roster and prior rights if so desired; otherwise, they will be released when their services are no longer required and will not establish a place on the new roster.
- F. UP engineers currently on an inactive roster pursuant to previous merger agreements shall participate in the roster formulation process described above based upon their date of seniority as a locomotive engineer.
- G. Engineers on each of the prior rights zones described above will be afforded common seniority on the other zone outside their prior rights zone. All such common seniority shall be based upon the current date of seniority as a locomotive engineer. If this process results in engineers having identical common seniority dates, seniority will be determined by the age of the employees with the older employee placed first. If there are more than two (2) employees with the same seniority date, and the ranking of the pre-merged rosters would make it impossible for age to be a determining factor, a random process, jointly agreed upon by the Director of Labor Relations and the appropriate General Chairman(men), will be utilized to effect a resolution. It is understood this process may not result in any employee running around another employee on his former roster.
- H. With the creation of the new seniority described herein, all previous seniority outside the St. Louis Hub held by engineers inside the new hub shall be eliminated and all seniority inside the new hub held by engineers outside the hub shall be eliminated. All pre-existing prior rights, top and bottom, or any other such seniority arrangements in existence, if any, are of no further force or effect and the provisions of this Agreement shall prevail in lieu thereof. Upon completion of consolidation of the rosters and implementation of this hub, it is understood that no engineer may be forced to any territory or assignment outside the St. Louis Hub.
- I. The total number of engineers on the master UP/BLE St. Louis Merged Roster #1 will be mutually agreed upon by the parties.

ARTICLE III - EXTRA BOARDS

- A. The following extra boards shall be established to protect vacancies and other extra board work into or out of the St. Louis Hub or in the vicinity thereof. It is understood whether or not such boards are guaranteed boards is determined by the designated collective bargaining agreement.
1. Chester - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Chester, including Sparta, and all other territories formerly covered by the former M&I Agreements not protected by Ste. Genevieve. If no extra board exists at Ste. Genevieve, this extra board will protect all extra service formerly protected by such extra board. This extra board may be used to perform relief of all locals, road switchers, work trains, and other regular assignments when the point of relief is closer to this board than St. Louis. It is not intended that this extra board be used for unassigned service comprehended by Pool 1 (Article I.A.2.I.) except Hours of Service relief of Pool 1 trains when the point of relief is closer to this board than St. Louis. The secondary source of supply when this extra board is exhausted will be St. Louis (Zone 1).
 2. Ste. Genevieve - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Ste. Genevieve but not including Bismarck, which includes all former M&I extra work on the Missouri side of the Mississippi River. At any time after one (1) year from date of implementation of this Implementing Agreement, this board may be consolidated into the extra board at Chester, subject to service of a 30-day notice of intent to do so by the Carrier. So long as this extra board remains at St. Genevieve, it shall be prior righted to former M&I engineers.
 3. Salem - Two (2) Extra Boards (combination road/yard) to protect the following:
 - a. All vacancies in the Salem-Villa Grove and Salem-Chicago through freight pools, and all extra service at or in the vicinity of Salem, including St. Elmo.
 - b. All vacancies in the Salem-Dexter through freight pool, and all extra service between Salem and Metropolis which originates at Salem or any point between Salem and Mt. Vernon, not including Mt. Vernon. This board will be staffed based upon the common seniority roster for the hub.

- c. The boards described in a. and b. above will supplement each other when one is exhausted. The boards described in a. and b. above, in that order, will supplement the Villa Grove extra board if that board is exhausted.
- 4. Villa Grove - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Villa Grove. This board will protect all Villa Grove-Chicago short pool vacancies and any HOS relief of Salem-Chicago or St. Louis-Chicago pool freight trains at or north of Findlay Junction. This board will supplement Salem if that board exhausted.
- 5. Dexter - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Dexter. The scope of this extra board includes all the service requirements outlined in Article I.A.3.c.
- 6. St. Louis - Three (3) Extra Boards (combination road/yard) to protect each of the following:
 - a. All Zone 1 extra road service between St. Louis Terminal and Dexter via the Chester Sub and between St. Louis Terminal and Poplar Bluff/Dexter via the DeSoto Sub, except as modified above, but including extra service at Bismarck. This board will also protect all yard extra service in the St. Louis Terminal which originates on the Illinois side of the Mississippi River. This board will be headquartered at St. Louis.
 - b. All Zone 1 extra service between St. Louis Terminal and Jefferson City. This board will also protect all yard extra service in the St. Louis Terminal which originates on the Missouri side of the Mississippi. This board will be headquartered at St. Louis.

NOTE: It is clearly understood that the Carrier's agreement to split the protection of extra yard service in the St. Louis Terminal in no way constitutes any restrictions upon the right of any yard engineer in the consolidated terminal to do any work at any location within the terminal.

- c. All Zone 2 extra service between St. Louis Terminal and Bloomington, South Pekin and Villa Grove. This extra board will protect all extra work on pool freight ID runs between St. Louis and Chicago, and in the event there is insufficient work in this service to justify a separate pool, such service will be protected by this extra board in its entirety.

- d. The extra boards described in a. and b. above will supplement each other when one is exhausted.
- 7. Jefferson City - One (1) Extra Board (combination road/yard) to protect all Zone 1 vacancies headquartered at Jefferson City including vacancies created by engineers laying off while exercising "reverse lodging" privileges. This board shall also protect any yard or road switcher assignments with an origin/termination of Jefferson City. Local or irregular service originating at Jefferson City working east on the UP Sedalia Subdivision will also be protected by this board.
- B. If additional extra boards are established or abolished after the date of implementation of this Agreement, it shall be done pursuant to the terms of the designated collective bargaining agreement. When established, the Carrier shall designate the geographic area the extra board will cover.

ARTICLE IV - APPLICABLE AGREEMENTS

- A. All engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977 (reprinted October 1, 1991), including all applicable national agreements, the "local/national" agreement of May 31, 1996, and all other side letters and addenda which have been entered into between date of last reprint and the date of this Implementing Agreement. Where conflicts arise, the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive. It is understood Side Letter Nos. 23 through 26 herein modify certain provisions of the designated Collective Bargaining Agreement as it pertains to the St. Louis Hub. It is further understood said Side Letters are made without prejudice to the positions of the respective parties and it may not be cited by any party in any other negotiations or proceedings.
- B. All runs established pursuant to this Agreement will be governed by the following:
 - 1. Rates of Pay: The provisions of the June 1, 1996 National Agreement will apply as modified by the May 31, 1996 Local/National Agreement.
 - 2. Overtime: Overtime will be paid in accordance with Article IV of the 1991 National Agreement.

3. Transportation: When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the Carrier shall authorize and provide suitable transportation for the crew.

NOTE: Suitable transportation includes Carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

4. Suitable Lodging: Suitable lodging will be provided by the Carrier in accordance with existing agreements.

C. Except where modified by this Implementing Agreement, the ID service provisions set forth in Arbitration Award No. 553 shall continue in full force and effect.

- D.
 1. Engineers performing service in the St. Louis to Dexter, Salem to Dexter and Dexter to Memphis pools will be governed by Section 4 (rates of pay) and Section 7 (straightaway service) of the UP St. Louis-Memphis ID Agreement dated April 5, 1991.
 2. In addition, in order to expedite the movement of trains in these pools, engineers on such runs will not stop to eat except in cases of emergency or unusual delays. Engineers on such runs shall be paid the prevailing away-from-home meal allowance (presently \$6.00) for the trip.
 3. Concurrent with the effective (implementation) date of this Merger Implementing Agreement, Section 5 of the St. Louis-Memphis ID Agreement dated April 5, 1991, and all other agreements or letters of understandings, if any, pertaining to a hand-up lunch at Illmo shall be extinguished and shall have no further force or effect. The practice of providing any engineers a hand-up lunch at Illmo will be discontinued.

E. Engineers will be treated for vacation, entry rates and payment of arbitraries as though all their time on their original railroad had been performed on the merged railroad. Engineers assigned to the Hub on the effective date of this Agreement (including those engaged in engineer training on such date) shall have entry rate provisions waived. Engineers hired/promoted after the effective date of the Agreement shall be subject to National Agreement rate progression provisions.

F. Engineers protecting pool freight operations on the territories covered by this Agreement shall receive continuous held-away-from-home terminal pay (HAHT) for all time so held at the distant terminal after the expiration of

sixteen (16) hours. All other provisions in existing agreement rules and practices pertaining to HAHT pay remain unchanged.

- G. Except where specific terminal limits have been detailed in the Agreement, it is not intended to change existing terminal limits under applicable agreements.
- H. Actual miles will be paid for runs in the new St. Louis Hub. Examples are illustrated in Attachment "G".

ARTICLE V - FAMILIARIZATION

- A. Engineers involved in the consolidation of the St. Louis Hub covered by this Agreement whose assignments require performance of duties on a new geographic territory not familiar to them will be given full cooperation, assistance and guidance in order that their familiarization shall be accomplished as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.
- B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices in implementing this Section. If disputes occur under this Article they may be addressed directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.
- C. It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or Manager of Operating Practices) to work with an engineer called for service on a geographical territory not familiar to him.
- D. Engineers hired subsequent to the effective date of this document will be qualified in accordance with current FRA certification regulations and paid in accordance with the local agreements that will cover the merged St. Louis Hub.

ARTICLE VI - IMPLEMENTATION

- A. The Carrier will give at least thirty (30) days' written notice of its intent to implement this Agreement.

- B. 1. Concurrent with the service of its notice, the Carrier will post a description of Zones 1 and 2 described in Article I herein.
2. Ten (10) days after posting of the information described in B.1. above, the appropriate Labor Relations Personnel, CMS Personnel, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. At this workshop, the representatives of the Organization will participate with the Carrier in constructing consolidated seniority rosters as set forth in Article II of this Implementing Agreement.
3. Dependent upon the Carrier's manpower needs, the Carrier may develop a pool of representatives of the Organization, with the concurrence of the General Chairmen, which, in addition to assisting in the preparation of the rosters, will assist in answering engineers' questions, including explanations of the seniority consolidation and implementing agreement issues, discussing merger integration and familiarization issues with local Carrier officers and coordinating with respect to CMS issues relating to the transfer of engineers from one zone to another or the assignment of engineers to positions.
- C. The roster consolidation process shall be completed in five (5) days, after which the finalized agreed-to rosters will be posted for information and protest in accordance with the applicable agreements. If the participants have not finalized agreed-to rosters, the Carrier will prepare such rosters, post them for information and protest, will use those rosters in assigning positions, and will not be subject to claims or grievances as a result.
- D. Once rosters have been posted, those positions which have been created or consolidated will be bulletined for a period of seven (7) calendar days. Engineers may bid on these bulletined assignments in accordance with applicable agreement rules. However, no later than ten (10) days after closing of the bulletins, assignments will be made.
- E. 1. After all assignments are made, engineers assigned to positions which require them to relocate will be given the opportunity to relocate within the next thirty (30) day period. During this period, the affected engineers may be allowed to continue to occupy their existing positions. If required to assume duties at the new location immediately upon implementation date and prior to having received their thirty (30) days to relocate, such engineers will be paid normal and necessary expenses at the new location until relocated. Payment of expenses will not exceed thirty (30) calendar days.
2. The Carrier may, at its option, elect to phase-in the actual pool consolidations which are necessary in the implementation of this
- 33 a [signature]*

Agreement. Engineers will be given ten (10) days' notice of when their specific relocation/reassignment is to occur.

ARTICLE VII - PROTECTIVE BENEFITS AND OBLIGATIONS

- A. All engineers who are listed on the prior rights St. Louis Hub (Zones 1 and 2) merged rosters shall be considered adversely affected by this transaction and consolidation and will be subject to the New York Dock protective conditions which were imposed by the STB. It is understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement.
1. Carrier will calculate and furnish TPA's for such engineers to the Organization as soon as possible after implementation of the terms of this Agreement. The time frame used for calculating the TPA's in accordance with New York Dock will be August 1, 1996 through and including July 31, 1997.
 2. In consideration of blanket certification of all engineers covered by this Agreement for wage protection, the provisions of New York Dock protective conditions relating to "average monthly time paid for" are waived under this Implementing Agreement.
 3. Test period averages for designated union officers will be adjusted to reflect lost earnings while conducting business with the Carrier.
 4. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this Agreement.
- B. Engineers required to relocate under this Agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an employee required to relocate may elect one of the following options:
1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.
 2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.
 3. Homeowners in Item 2 above who provide proof of a bona fide sale of their home at fair value at the location from which relocated shall be eligible to receive an additional allowance of \$10,000.

a) This option shall expire within five (5) years from date of application for the allowance under Item 2 above.

b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

NOTE: All requests for relocation allowances must be submitted on the appropriate form.

4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this Agreement.

5. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this Implementing Agreement.

6. Engineers receiving an "in lieu of" relocation allowance pursuant to this Implementing Agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

ARTICLE VIII - SAVINGS CLAUSES

A. The provisions of the applicable Schedule Agreement will apply unless specifically modified herein.

B. It is the Carrier's intent to execute a standby agreement with the Organization which represents engineers on the former Missouri and Illinois. Upon execution of that Agreement, said engineers will be fully covered by this Implementing Agreement as though the Organization representing them had been signatory hereto.

C. Nothing in this Agreement will preclude the use of any engineers to perform work permitted by other applicable agreements within the new seniority districts described herein, i.e., engineers performing Hours of Service Law relief within the road/yard zone, ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones, etc.

D. The provisions of this Agreement shall be applied to all engineers covered by said Agreement without regard to race, creed, color, age, sex, national origin, or physical handicap, except in those cases where a bona fide occupational qualification exists. The masculine terminology herein is for the purpose of convenience only and does not intend to convey sex preference.

ARTICLE IX - HEALTH AND WELFARE

Engineers of the former UP who are working under the collective bargaining agreement designated in Article IV.A. of this Implementing Agreement belong to the Union Pacific Hospital Association. Former SSW/SPCSL engineers are presently covered under United Health Care (former Travelers GA-23000) benefits. Said former SSW/SPCSL engineers will have ninety (90) days to make an election as to keeping their old Health and Welfare coverage or coming under the health and welfare coverage provided by the designated CBA. Any engineer who fails to exercise said option shall be considered as having elected to retain existing coverage. Engineers hired after the date of implementation will be covered under the plan provided for in the surviving CBA. Copy of the form to be used to exercise the option described above is attached as Attachment "H" to this Agreement.

ARTICLE X - EFFECTIVE DATE

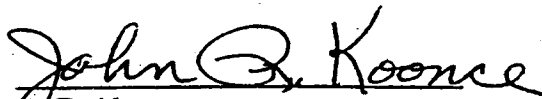
This Agreement implements the merger of the Union Pacific and SSW/SPCSL railroad operations in the area covered by Notice dated October 10, 1997.

Signed at Kansas City, Missouri, this 15th day of April, 1998.

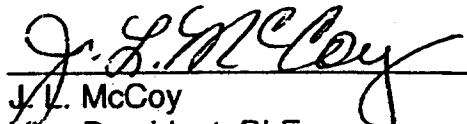
**FOR THE BROTHERHOOD
LOCOMOTIVE ENGINEERS:**

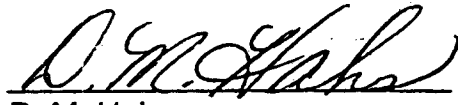

D. E. Penning
General Chairman, BLE


D. E. Thompson
General Chairman, BLE



J. R. Koonce
General Chairman, BLE

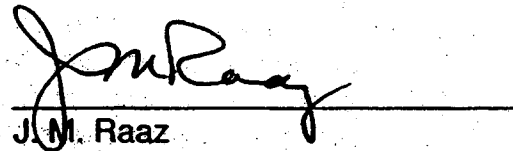
APPROVED:


J. L. McCoy
Vice President, BLE


D. M. Hahs
Vice President, BLE

FOR THE CARRIERS:


M. A. Hartman
General Director-Labor Relations
Union Pacific Railroad Co.


J. M. Raaz
Assistant Vice President - LR
Union Pacific Railroad Co.

April 15, 1998

MR D E PENNING
GENERAL CHAIRMAN BLE
12531 MISSOURI BOTTOM RD
HAZELWOOD MO. 63042

MR D E THOMPSON
GENERAL CHAIRMAN BLE
414 MISSOURI BLVD
SCOTT CITY MO 63780

MR JOHN R KOONCE
GENERAL CHAIRMAN BLE
5050 POPLAR AVE STE 501
MEMPHIS TN 38157

Gentlemen:

This refers to the Merger Implementing Agreement for the St. Louis Hub entered into this date.

In Side Letter No. 21 of the Merger Implementing Agreement for the North Little Rock/Pine Bluff Hub entered into on October 9, 1997, Carrier made certain written commitments regarding engineers residing at Illmo and Poplar Bluff. The purpose of this Side Letter is to more specifically define the rights and responsibilities of said engineers at Poplar Bluff and Illmo in line with the Merger Implementing Agreement for the St. Louis Hub and said Side Letter No. 21.

This Side Letter addresses three (3) specific groups of engineers:

- A. Former UP engineers assigned to the UP Dupo - Poplar Bluff freight pool (home terminal St. Louis) who have continued to reside at Poplar Bluff under a "reverse lodging" arrangement.
- B. Former UP engineers assigned to the UP Salem - Poplar Bluff freight pool (home terminal Salem/Poplar Bluff) who have continued to reside at Poplar Bluff under a "reverse lodging" arrangement.
- C. Former SSW and UP engineers at Illmo and Poplar Bluff who, as a result of the Implementing Agreement, will have their home terminal changed to St. Louis.

Pursuant to the terms of Articles I.A.2. and I.A.5. of the Implementing Agreement covering the St. Louis Hub, the consolidated pool operating between St. Louis and Dexter will be home terminated at St. Louis, and the pool operating between Salem and Dexter will likewise be home terminated at Salem. It is the intent and desire of the Carrier that all engineers assigned to this pool who presently reside in Illmo and Poplar Bluff be relocated to St. Louis and Salem. However, considering the large number of engineers who reside at these locations who are reasonably close to retirement age, the Carrier has expressed its willingness to enter into an attrition arrangement for a fixed period of time in order to permit engineers to maintain their residences in the Poplar Bluff and Illmo areas for said period of time while protecting these pools. The terms and conditions of this interim arrangement are as follows:

Side Letter No. 11
April 15, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Page 2

1. Former SSW and UP engineers who are required to relocate to St. Louis or Salem shall be considered eligible for the relocation benefits set forth in Article VII.B. of this Implementing Agreement.
2. Former SSW engineers who are assigned to either of these pools who decline to relocate to St. Louis or Salem and exercise the "reverse lodging" option provided in Article I.A.2.g. of the Implementing Agreement shall be considered eligible for the relocation benefits under Article VII.B. of this Implementing Agreement. If such engineers should subsequently relocate to St. Louis under the provisions of this Side Letter or otherwise, such relocation shall be considered to be a seniority move and shall not trigger any further relocation benefits under this Implementing Agreement.
3. Those former UP engineers assigned to the UP Dupo - Poplar Bluff and Salem - Poplar Bluff freight pools who have continued to reside at Poplar Bluff under a "reverse lodging" attrition arrangement may elect to relocate to St. Louis or Salem, and if so relocated, shall be considered eligible for the relocation benefits set forth in Article VII.B. of this Implementing Agreement. If such employees decline to relocate and elect to exercise the "reverse lodging" option provided in this Agreement, they shall become subject to the provisions of the immediately preceding Section 2 hereof. As agreed in Item 2 of Side Letter No. 21 to the NLR/PB Merger Implementing Agreement, it is undisputed that the distance between Poplar Bluff and Dexter shall not be an issue regarding entitlement of such engineers to such relocation benefits.
4. Those engineers described in Sections 2 and 3 above who decline to relocate to St. Louis or Salem and are subsequently forced to relocate because they are unable to hold a regular assignment at Dexter/Poplar Bluff, such relocation shall be considered to be a seniority move and shall not trigger any further relocation benefits under this Implementation Agreement.
5. Effective upon service of a notice by the Carrier, which cannot be served any sooner than April 1, 2005, the "reverse lodging" attrition arrangements set forth in this Implementing Agreement shall become null and void. On and after that date, all engineers described in Sections 1, 2 and 3 above shall be required to protect their respective freight pools at the designated home terminal locations if they choose to continue to occupy such assignments. This change shall be effected by the service of a thirty (30) day notice by the Carrier of its intent to do so.
6. The provisions of this Side Letter No. 11 shall only apply to engineers residing in Poplar Bluff or Ilmo or vicinity, and protecting service at such location or vicinity, on October 10, 1997 (date of Carrier's St. Louis Hub Notice).

Side Letter No. 11
April 15, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Page 3

7. It is understood this Agreement does not operate to preclude an engineer from receiving full relocation benefits under Article VII.B. when required to relocate to Dexter to protect the Dexter-Memphis pool, extra board, or any other assignments established at that location.
8. Under the unique circumstances surrounding this Side Letter, engineers at Poplar Bluff and Ilmo and vicinity will not be required to provide proof of relocation to Dexter in order to receive the relocation benefits under Article VII.B.1. and 2., but must do so to receive the additional benefit under Article VII.B.3.

The above-described arrangements are designed to deal with a peculiar situation under specific circumstances, and shall not be referred to by either party in any other proceeding or negotiations.

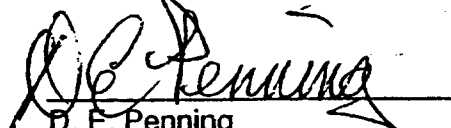
If the foregoing adequately and accurately sets forth our agreement and understanding in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,



M. A. Hartman
General Director - Labor Relations

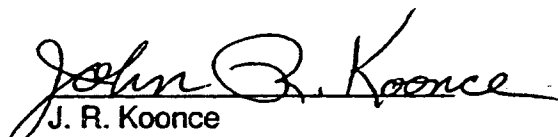
AGREED:



D. E. Penning
General Chairman, BLE



D. E. Thompson
General Chairman, BLE



J. R. Koonce
General Chairman, BLE

cc: D. M. Hahs
Vice President BLE

J. L. McCoy
Vice President BLE

B

UNION PACIFIC RAILROAD COMPANY

W.S. HINCKLEY
GENERAL DIRECTOR
LABOR RELATIONS-OPERATING-SOUTH



1416 DODGE STREET
OMAHA, NEBRASKA 68179
(402) 271-2689 5201

October 18, 1999
110.61-21-303

Mr. C.R. Rightnower
General Chairman BLE
320 Brookes Dr. Suite 115
Hazelwood, Mo 63042

Mr. D. E. Thompson
General Chairman BLE
414 Missouri BLVD
Scott City, MO 63780

Gentlemen:

This refers to Side Letter No. 11 of the St. Louis Hub Agreement. That side letter, along with corresponding sections of the Hub Agreement provide for certain engineers to work at Dexter in the St. Louis - Dexter and Salem - Dexter pools. This arrangement was meant to provide employment at that point on an attrition basis for a number of years without the need to force "non Dexter" engineers to that location.

Recently a number of engineers were forced to Dexter and it was brought to the attention of the Carrier by the SSW General Chairman that it was the intent of the parties to enter into an agreement to require engineers at Dexter in these two pools to fill other vacancies at Dexter prior to forcing other engineers to Dexter. It was pointed out that similar agreements have been made at other locations such as Jefferson City and Pratt with similar attrition arrangements.

In keeping with the parties intent the following is agreed to at Dexter:

"If there are unfilled positions on the extra board, locals or other road assignments (including the Dexter - Memphis pool) with a home terminal at Dexter or in the vicinity, the junior engineers at Dexter, (in the St. Louis - Dexter and Salem - Dexter pools) who are entitled to reverse lodging and held away will be required to cover such positions or assignments. Engineers covered by Side Letter No. 11 who are force assigned under these provisions will not have their TPA's reduced and will be treated as holding the highest paying assignment at Dexter. When engineers who hold these positions return to the pools, they shall again be eligible for the "reverse" provisions they are currently entitled."

"An extra board will be maintained at Dexter, Missouri to protect engineer vacancies as per the St. Louis Hub Agreement. This extra board will be maintained at a level of no less than 30% (all fractions are amended downward) of the total number of engineer positions protected by the Dexter extra board."

If the foregoing adequately and accurately sets forth our joint understanding on this matter please so indicate by signing in the space provided for that purpose. I have sent each of you a copy with the signature copies to General Chairman Thompson. When signed by him, please send them to General Chairman Rightnowar for his signature and forwarding on to me. Your expeditiously handling will assist in releasing any engineers currently forced to Dexter.

Yours truly,

W. S. Hinckley
W. S. Hinckley

Agreed:

W. E. Thompson
General Chairman BLE SSW

C. R. Rightnowar
General Chairman BLE MPUL

C

L.A. LAMBERT
General Director
Labor Relations-Operating
Southern Region

UNION PACIFIC RAILROAD COMPANY

1416 Dodge Street
Omaha, Nebraska 68179-0000
(402) 271-3795



January 20, 1999

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLE
320 BROOKES DR STE 115-118
HAZELWOOD MO 63042

MR D E (GENE) THOMPSON
GENERAL CHAIRMAN BLE
414 MISSOURI BLVD
SCOTT CITY MO 63780

Gentlemen:

This refers to the Merger Implementing Agreement for the St. Louis Hub.

In Side Letter No. 16 of the St. Louis Hub Merger Implementing Agreement and referenced in Article 1.B.3.a. of Kansas City Hub Merger Implementing Agreement, the parties agreed to allow former UP and SSW engineers residing at or in the vicinity of Jefferson City to continue to maintain their residences at that location subject to the language of Side Letter No. 16.

It is understood that St. Louis is the home terminal for all engineers performing service in the St. Louis to Jefferson City pool. The present UP and SSW engineers at Jefferson City working in the St. Louis Hub will be eliminated by attrition. When a former UP or SSW engineer, residing at or in the vicinity of Jefferson City, vacates his pool assignment through retirement, resignation, voluntary seniority move/relocation, etc., and it is not claimed/occupied by a prior right Jefferson City engineer covered by this Side Letter, such position will no longer be maintained at Jefferson City but will be readvertised as St. Louis as the home terminal.

Sufficient pool turns (along with extra board positions, as described below) shall be established to accommodate those engineers identified on the attachment to this Letter of Agreement. In the event there is a reduction in pool turns, the junior positions home terminalled at St. Louis shall be reduced.

An extra board will be maintained at Jefferson City to protect assignments working east in St. Louis Hub Zone 1 (Jefferson City to St. Louis). This extra board will be maintained at a level of no less than 30% (all factors are amended downward) of the number of engineers occupying pool turns and residing at Jefferson City under this attrition arrangement. If there are unfilled positions on such extra or unfilled positions on locals on


Messrs. Rightnowar and Thompson
January 20, 1999
Page Two

other road assignments working out of Jefferson City east, the junior engineers in St. Louis to Jefferson City pool, residing at or in the vicinity of Jefferson City, will be required to cover such position or assignment. Engineers residing at Jefferson City under this Agreement who are forced assigned under the provisions of this Side Letter will not have their TPA's reduced. Nothing in this Side Letter is intended to convey the Jefferson City - East Extra Board the exclusive right to protect all assignments in Zone 1.

Engineers, as set forth on the attachment, who continue to reside at or in the vicinity of Jefferson City will be afforded reverse lodging and HAHT privileges at St. Louis and lay off privileges at Jefferson City.

If the foregoing adequately and accurately sets forth our agreement on this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,


L. A. LAMBERT
9-15-99

Att.

AGREED:


C. R. Rightnowar
General Chairman, BLE


D. E. Thompson
General Chairman, BLE

CC: MR DON M HAHS
VICE PRESIDENT BLE
1011 ST ANDREWS
KINGWOOD TX 77339

MR J L McCOY
VICE PRESIDENT BLE
6084 BELLE FOREST DR
MEMPHIS TN 38115

D

DECLARATION OF ROBBIN D. ROCK

I, Robbin D. Rock, declare the facts stated herein are known to me to be true, based on my personal knowledge or on information received in the ordinary course of the discharge of my employment responsibilities.

1. My name is Robbin D. Rock, I am Director - Labor Relations (Arbitration & Negotiations) for Union Pacific Railroad Company ("UPRR"). My address is 1400 Douglas Street, Mail Stop 0710, Omaha, NE 68179. As Director - Labor Relations, I have responsibility for negotiation, implementation, interpretation and arbitration of collective bargaining agreement provisions UPRR has with the Brotherhood of Locomotive Engineers on the Central Region, including the former Missouri Pacific Upper Lines territory.
2. In mid-August, 2003, UP was attempting to fill positions at Dexter, Missouri. On a date I am unable to remember, UP's Crew Management Services (CMS) was attempting to force assign an unnamed engineer from St. Louis to a position in Dexter. The engineer objected to CMS' attempt to require him to protect the Dexter position and complained to both CMS and, apparently, his Local Chairman, Mr. Brad Thompson.
3. While I cannot specifically recall the date, Mr. Thompson contacted me via telephone to discuss CMS' efforts to fill jobs at Dexter by forcing engineers from St. Louis. Mr. Thompson raised the issue of how the October 18, 1999 letter of understanding was being applied. Actually, he noted CMS was not applying the letter of understanding properly.
4. We discussed the requirements of the October 18, 1999 letter of understanding at some length. It was obvious to both Mr. Thompson and me that UP had not been properly applying the requirements of that understanding. In the weeks preceding our telephone discussion, UP had force assigned at least six engineers to non-through freight positions in Dexter, even though there were engineers residing at/near Dexter and receiving the reverse held-away and lodging benefits who could have been and should have been assigned, as required by the October 18, 1999 letter of understanding.
5. Based on my discussion with Mr. Thompson, I determined UP's earlier assignment of the six engineers was improper and that the matter had to be corrected. I

informed Mr. Thompson accordingly. He and I then discussed the fact that UP should rectify the situation and properly assign the Dexter engineers to the positions, in accordance with the requirements of the letter of understanding. I told him the engineers who had been improperly force assigned to Dexter would be released and the engineers residing at/near Dexter would be assigned to the jobs. Mr. Thompson concurred that these mistakes needed to be corrected as soon as possible.

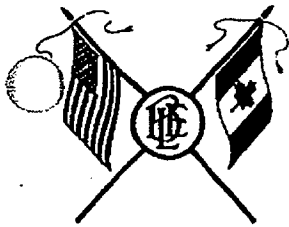
6. Based on that telephone conversation, I instructed CMS to release the six engineers who had been improperly forced to Dexter and replace them with the engineers residing at/near Dexter who are receiving the reverse held-away and lodging benefits to the vacated positions.
7. I find it ironic that the actions I took to correct an improper application of the letter of understanding -- actions that were initiated by Mr. Thompson's telephone call -- are now being challenged by BLET. I have no doubt that had I not corrected the improper application and had left the force assigned engineers at Dexter, the claimants in this case would be those same force assigned engineers.

Signed and dated this 13th day of August 2004.

R.D. Rock

Robbin D. Rock
Director - Labor Relations
Union Pacific Railroad
1416 Dodge Street
Omaha NE 68179

E



Brotherhood of Locomotive Engineers

General Committee of Adjustment
Union Pacific Railroad Central Region

320 Brookes Dr., Suite 115 • Hazelwood, MO 63042 • (314) 895-5858 • Fax (314) 895-0104

C.R. Rightnowar
GENERAL CHAIRMAN

A.E. Rhodes
1ST VICE-CHAIRMAN

T.H. Wells
2ND VICE-CHAIRMAN

C.A. Brand
SECRETARY-TREASURER



October 23, 2003

Mr. Roland Watkins
Director Arbitration Services
National Mediation Board
1031 K Street, Suite 250 East
Washington, D.C. 20572

Via Facsimile and Express Mail
EL 937480707 US

Dear Mr. Watkins:

Please accept this as the Organization's request for a selection list for the assignment of a New York Dock Arbitrator to an on-property dispute related to the Carrier's improper, forced reassignment of Engineers at Dexter, Missouri, from the St. Louis-Dexter and Salem-Dexter pools, to the extra board at Dexter, Missouri, and the improper, forced reassignment of the subsequently, improperly displaced extra board Engineers at Dexter, Missouri, to assignments at other locations, and the improper, forced reassignment of St. Louis, Missouri, and Dupo, Illinois, Engineers to Dexter, Missouri, with the subsequent, improper displacement of Engineers at Dexter, Missouri, improperly returned to train service, all in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement, negotiated pursuant to the UP/SP Merger.

This dispute envelops all pay and compensation issues, benefits, etc., related to improper assignments and reassignments, including, but not limited to, reverse lodging and reverse held-away-from-home payments.

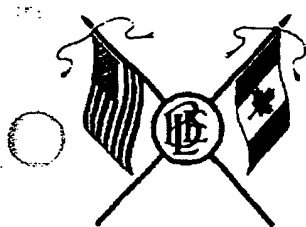
The Parties' are at impasse as to this matter, pursuant to meetings and telephone discussions.

Sincerely,

Charles R. Rightnowar

cc: R. D. Rock

F



Brotherhood of Locomotive Engineers

General Committee of Adjustment
Union Pacific Railroad Central Region

320 Brookes Dr., Suite 115 • Hazelwood, MO 63042 • (314) 895-5858 • Fax (314) 895-0104

REC'D

APR 29 2004

Labor Relations

C.R. Righthower
GENERAL CHAIRMAN

A.E. Rhodes
1ST VICE-CHAIRMAN

T.H. Wells
2ND VICE-CHAIRMAN

C.R. Brond
SECRETARY-TREASURER



April 26, 2004

Mr. A. Terry Olin
General Director-Labor Relations
Arbitration & Negotiations
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Via Facsimile and Certified Return Receipt
7001 1940 0006 0247 2100

Dear Mr. Olin:

This is to acknowledge your letter dated April 15, 2004. While I agreed during our selection process that I would confer with you as to proposed questions at issue, I advised you that we retained our right to submit separate questions at issue, should the parties not agree.

If you review our initial claims as submitted to the Carrier, as well as our correspondence with Roland Watkins, NMB, you will find that we were all-inclusive as to the claims and issues from the on-set of this dispute. We were all-inclusive in the instant case because it is a complex matter, and we provided you with the maximum information so that you would fully understand our position, and your liabilities.

Without waiver of the foregoing, we propose the following questions at issue:

1. Whether the Carrier violated the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement, or any other BLE Agreement, by forcing Engineers from the St. Louis-Dexter and Salem-Dexter freight pools to the Extra Board at Dexter, Missouri?
2. If so, what is the remedy?
3. Whether the Dexter Extra Board Engineers displaced by the Carrier's action in Question No. 1, that were forced to assignments at other locations, such as St. Louis, Missouri, and Dupu, Illinois, were forced-assigned in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement?

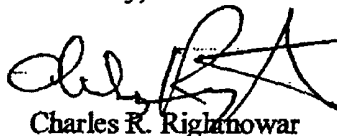
4. If so, what is the remedy?
5. Whether the forced-assignment of Engineers from St. Louis, Missouri, and Dupo, Illinois, to assignments at Dexter, Missouri, violated the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement?
6. If so, what is the remedy?
7. Whether those Engineers improperly displaced at Dexter, Missouri, by the Engineers forced-assigned to that location by the Carrier's actions in Questions Nos. 1 and 5, and were subsequently forced to assignments as Trainmen, were so assigned in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement?
8. If so, what is the remedy?

As we have advised throughout this matter, the remedy sought by the Organization includes all pay and compensation issues, benefits, etc., related to improper assignments and reassignments, including, but not limited to, reverse lodging and reverse held-away-from-home payments.

Please advise as to your willingness to accept the above questions at issue, so as to make them joint questions. If not, please submit your proposed questions. If we cannot agree as to joint questions, the above questions shall be submitted separately as Organization questions at issue.

I will contact Arbitrator James McDonnell to request his available dates to hear this matter. Should we request one or two days?

Sincerely,



Charles R. Rightnowar

UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREET
OMAHA, NEBRASKA 68179

January 22, 2004

VIA FAX AND U. S. MAIL

Mr. Roland Watkins
Director - Arbitration Services
National Mediation Board
1031 "K" Street NW, Suite 250 East
Washington, DC 20572

Dear Mr. Watkins:

This has reference to Brotherhood of Locomotive Engineers ("BLE") General Chairman C. R. Rightnowar's letter dated January 5, 2004, regarding BLE's October 23, 2003 request "... for the assignment of a New York Dock Arbitrator to an on-property dispute related to the Carrier's improper, forced reassignment of Engineers at Dexter, Missouri, from the St. Louis-Dexter and Salem-Dexter pools, to the extra board at Dexter, Missouri, and the improper, forced reassignment of the subsequently, improperly displaced extra board Engineers at Dexter, Missouri, to assignments at other locations, and the improper, forced reassignment of St. Louis, Missouri, and Dupon, Illinois, Engineers to Dexter, Missouri, with the subsequent, improper displacement of Engineers at Dexter, Missouri, improperly returned to train service, all in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement, negotiated pursuant to the UP/SP Merger." In connection therewith, BLE inquires "... when the parties are to receive the requested selection list."

The purpose of this letter is to convey Union Pacific's position regarding BLE's request. In short, Union Pacific ("UP") asserts BLE's request is inappropriate since the alleged dispute falls outside the specific jurisdictional boundaries for dispute arbitration contained in the appendix of New York Dock RY. - Control - Brooklyn Eastern District, 360 ICC 60 (1979) ("New York Dock"). As will be shown, Mr. Rightnowar's own statements and actions highlight the impropriety of this request and drive no other conclusion than BLE's request must be denied.

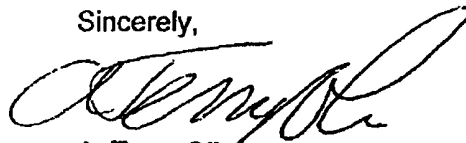
As you are aware, a New York Dock arbitrator is empowered only to address, as set forth in Article I, Section 11 of New York Dock, a "... dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except Sections 4 and 12 of this Article I..." (Emphasis added) This jurisdiction does not extend to interpretation of collective bargaining agreement provisions. The proper forum for adjudicating disputes arising from interpretation of collective bargaining agreement provisions is found in Article 3 of the Railway Labor Act and applicable provisions of the controlling collective bargaining agreement.

It is noteworthy Mr. Rightnowar's characterization of the alleged dispute contains no reference to any provision of New York Dock that is in dispute. According to Mr. Rightnowar, the dispute focuses on UP's alleged "... violation of the October 18, 1999 Agreement ..." and, at least implicitly, other rules governing the seniority, displacement and/or assignment of engineers. Additionally, Mr. Rightnowar writes, in both his October 23, 2003 and January 5, 2004 correspondence, "... this dispute envelops all pay and compensation issues, benefits, etc., related to improper assignments and reassignments, including, but not limited to, reverse lodging and reverse held-away-from-home payments ...". Not one of the rules, agreements or topics cited or implied by Mr. Rightnowar as the subject matter(s) of the alleged dispute is in an "... appendix ..." of New York Dock. Clearly, the alleged dispute does not arise as a result of "... the interpretation, application or enforcement of any provision of this appendix, except Sections 4 and 12 of this Article I." From any perspective, this is a dispute over interpretation of a collective bargaining agreement provision. In light of Mr. Rightnowar's characterization of this matter dispute and that a New York Dock arbitrator lacks jurisdiction to address disputes arising from interpretation or application of collective bargaining agreement provisions, the foundation for Mr. Rightnowar's request vanishes.

Mr. Rightnowar's handling of this matter confirms the alleged dispute falls outside the jurisdictional purview of a New York Dock arbitrator. In correspondence dated December 26, 2003, Mr. Rightnowar filed a time claim seeking "penalty" payments for UP's alleged violation of "... Side Letter No. 11 to the St. Louis Hub Merger Implementing Agreement and Letter of Understanding dated October 18, 1999 ..." - a fact omitted by Mr. Rightnowar in his January 5 letter. (A copy of Mr. Rightnowar's claim is attached for your reference.) The requisite process for resolving Mr. Rightnowar's claim is subject to, and governed by, applicable provisions of the controlling Agreement and the Railway Labor Act (and not by New York Dock).

The dispute machinery contained in New York Dock is specifically reserved, as set forth in Article I, Section 11 thereof, for disputes arising from "... interpretation, application or enforcement of any provision of this appendix, except Sections 4 and 12 of this Article I. ...". Consequently, the New York Dock arbitration procedures cannot be used as a situational or convenient resolution mechanism or to avoid the requirements of Section 3 of the Railway Labor Act and the controlling collective bargaining agreement. Likewise, it is equally inappropriate that a dispute be progressed simultaneously under both procedures. Accordingly, Mr. Rightnowar's request in this matter is improper and must therefore be rejected.

Sincerely,



A. Terry Olin
General Director - Labor Relations
Arbitration & Negotiations

Enclosure

cc: Mr. R. D. Meredith
Mr. R. D. Rock
Mr. G. A. Barton
Mr. K. M. McBratney

H



July 13, 2004

VIA FAX AND U. S. MAIL

Mr. C. R. Rightnowar
General Chairperson
Brotherhood of Locomotive Engineers
and Trainmen
320 Brookes Drive, Suite #115
Hazelwood, MO 63042

Dear Mr. Rightnowar:

This refers to your letter of April 26, 2004, regarding the question(s)-at-issue involving a dispute over assignment of prior rights engineers at Dexter, Missouri, to be submitted to Referee J. R. McDonnell for arbitration pursuant to Section 11 of New York Dock. In connection therewith, your organization proposed eight questions to be addressed by Referee McDonnell. The purpose of this letter is to review UP's position(s) regarding the appropriateness of those questions.

After careful consideration, UP has concluded it cannot agree to the questions proposed by your organization. There are several irrefutable facts that serve as the foundation for this decision.

First, none of the proposed questions focus on interpretation or application of a provision of New York Dock. In each and every instance, you are asking Referee McDonnell to address a dispute that involves interpretation of a collective bargaining agreement. Inasmuch as Mr. McDonnell's jurisdiction stems from Section 11 of New York Dock, he is expressly limited to addressing the topics specifically identified therein — i.e., "*... to the interpretation, application or enforcement of any provision of [New York Dock] . . . , except sections 4 and 12 . . .*" Clearly, this statement of the New York Dock referee's subject authority does not extend to interpreting collective bargaining agreement provisions. Consequently, Mr. McDonnell cannot answer the questions posed in your April 26 letter.

Second, your organization specifically acknowledges in the second paragraph of the April 26 letter that time claims (Railway Labor Act Section 3 grievances) have already been filed on the identical matters/issues you now seek to arbitrate pursuant to New York Dock. Both your progression and acknowledgement of these Section 3 claims undeniably places the involved issues outside the purview of New York Dock arbitration and squarely within the dispute resolution machinery contained in the Railway Labor Act and applicable collective bargaining agreement provisions. It is wholly inappropriate for your organization to simultaneously seek arbitration of a dispute

A. Terry Olin
General Director

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 0710, Omaha, NE 68179-0710
ph. (402) 544-3201 fx. (402) 233-2787
terryolin@up.com

under the auspices of New York Dock and Section 3 of the Railway Labor Act. Your April 26 letter not only proposes questions that fail to focus on a dispute within the jurisdiction purview of a New York Dock arbitrator, but also contains a clear recognition that the Section 3 grievance procedure is the proper forum for adjudicating grievances of this nature.

Third, four of the suggested questions seek to have Referee McDonnell design and impose a "remedy." The authority of referees appointed pursuant to Section 11 of New York Dock does not extend to or include fashioning and imposing remedies. As noted earlier, the authority of an arbitrator appointed pursuant to Section 11 of New York Dock is solely and expressly limited to interpreting, applying and/or enforcing a provision of New York Dock and does not include correcting an alleged or perceived harm.

Fourth, a majority of your questions are duplicative. When posed in the proper forum, the questions can be addressed in a simpler and more straightforward manner.

Based on all of the foregoing, your questions, and for that matter this entire dispute, cannot be arbitrated under the auspices of a New York Dock Section 11 dispute and brought to a permanent and final conclusion.

UP would make two suggestions regarding the handling of the instant dispute. First, the involved time claims must be properly handled through the dispute resolution machinery set forth in Section 3 of the Railway Labor Act and applicable collective bargaining agreement provisions and, if necessary, arbitrated pursuant to the procedures set forth therein. Second, and without prejudice to its position as outlined above, UP insists a procedural question regarding the jurisdictional propriety of this arbitration be submitted to the arbitrator. Should the arbitrator accept New York Dock jurisdiction on this matter, and UP does not believe he will, there should only be a single "merits" question.

Consistent with the foregoing, UP suggests the following questions be submitted to Referee McDonnell in lieu of those posed in your April 26 letter:

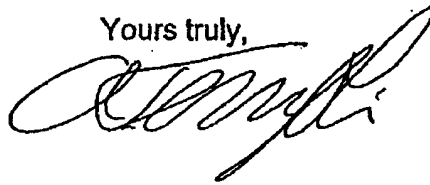
1. *"Is the matter of UP's alleged violation of the October 18, 1999 letter of understanding between UP and BLE involving the assignment of prior rights engineers at Dexter, Missouri, a subject properly adjudicated pursuant to Section 11 of New York Dock?"*
2. *"If the answer to Question No. 1, above, is answered in the affirmative, is UP's assignment of engineers residing at Dexter, Missouri, and possessing reverse lodging privileges pursuant to Article 1, Section A, Paragraph 2, Subparagraph 1 and Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement, dated April 15, 1998, to vacant positions with on-duty points at Dexter, Missouri, (other than the freight pool(s)) consistent with the*

*provisions of the October 18, 1999 Letter of Understanding
between UP and BLE?"*

It is our view the questions posed above will strike at the heart of the issues involved in this dispute and will provide the proper foundation for permanent resolution of the matter. Thus, I would appreciate your sincere consideration of the above-posed questions.

If you would like to discuss the contents of this letter further, please do not hesitate to give me a call at your earliest convenience.

Yours truly,



cc: Mr. R. D. Meredith
Mr. R. D. Rock
Mr. K. M. McBratney

UNION PACIFIC RAILROAD COMPANY'S QUESTIONS-AT-ISSUE

Procedural Issue:

1. Is the matter of Union Pacific's alleged violation of the October 18, 1999 Letter of Understanding between Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers involving the assignment of proper rights engineers at Dexter, Missouri, a subject properly adjudicated pursuant to Section 11 of New York Dock?

Merits Issue:

2. If the answer to Question No. 1, above, is answered in the affirmative, is Union Pacific's assignment of engineers residing at/near Poplar Bluff, Missouri, or Illmo, Illinois, and possessing "reverse lodging and held-away" privileges pursuant to Article I, Section A, Paragraph 2, Subparagraph I and Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement, dated April 15, 1998, to positions with on-duty points at Dexter, Missouri, (other than the freight pool(s)) consistent with the provisions of the October 18, 1999 Letter of Understanding between Union Pacific and the Brotherhood of Locomotive Engineers?

ORGANIZATION QUESTIONS-AT-ISSUE

1. Whether the Carrier violated the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement, or any other BLE Agreement, by forcing Engineers from the St. Louis-Dexter and Salem-Dexter freight pools to the Extra Board at Dexter, Missouri?
2. If so, what shall the remedy be?
3. Whether the Dexter Extra Board Engineers displaced by the Carrier's action in Question No. 1, that were forced to assignments at other locations, such at St. Louis, Missouri, and Dupo, Illinois, were forced-assigned in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement?
4. If so, what is the remedy?
5. Whether the forced-assignment of Engineers from St. Louis, Missouri and Dupo, Illinois, to assignments at Dexter, Missouri, violated the October 18, 1999

Agreement, amending Side Letter No. 11 of the St. Louis Merger Implementing Agreement?

6. If so, what shall the remedy be?
7. Whether those Engineers improperly displaced at Dexter, Missouri, by the Engineers forced-assigned to that location by the Carrier's actions in Questions Nos. 1 and 5, and were subsequently forced to assignments at Trainmen, were so assigned in violation of the October 18, 1999 Agreement, amending Side Letter No. 11 of the St. Louis Hub Merger Implementing Agreement?
8. If so, what shall the remedy be?

DECISION

I have reviewed and analyzed all of the documents, evidence, and the written and verbal submissions presented by the parties in this dispute.

I find that the threshold question submitted by the Union Pacific Railroad Company's Question at issue is controlling.

I find that the answer to that question is in the negative.

After months of study I have concluded that I am not empowered to resolve the issue before me.

The Side Letter No. 11 dated April 15, 1998 does not find its genesis in the Merger Implementing Agreement, but rather, stands for what it is; a side letter. In paragraph two(2) of the Side Letter it states:

"The purpose of this Side Letter is to more specifically define the rights and responsibilities of said engineers at Poplar Bluff and Illmo in line with the Merger Implementing Agreement for the St. Louis Hub and Side Letter No. 21."

It is a stretch to claim that Side Letter No. 11 has a clear and direct connection to the Merger Implementing Agreement. It does not.

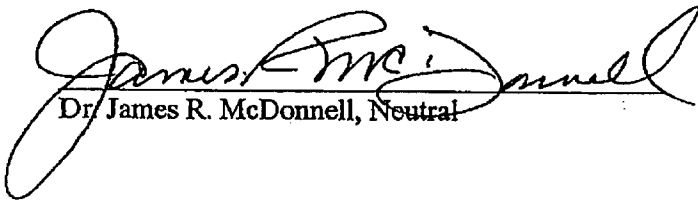
I cannot reach the merits in this case because the negative answer to Procedural Issue 1, submitted by the Carrier, will not allow it.

This matter does not find itself in the jurisdictional territory of a New York Dock arbitrator.

AWARD AND ORDER

This committee finds that it does not have jurisdiction to resolve the dispute presented.

All claims presented by the Organization in this matter are denied.


Dr. James R. McDonnell, Neutral

Charles R. Rightnowar, Organizational Member

Terry Olin, Carrier Member

April 14, 2005
Date

J

Brotherhood of Locomotive Engineers
Division 442
406 Roth Drive
Scott City, MO 63780

Brad C Thompson Local Chairman
Phone 573-979-3671 Fax 573-264-2604
Email Div442lc@aol.com

REC'D
DEC 23 2003
Labor Relations

1380517

November 05, 2003

File#: 110301

Mr Ken McBratney
Asst. Director of Labor Relations
Union Pacific Railroad Company
1416 Dodge Street Room 323
Omaha, Nebraska 68179

Dear Sir:

I am presenting the following claim on behalf of Engineer B. C. Thompson. SS#: 496724264.
Time slip dated: 09/10/03 Declination #: AZ0910167 C6. Declination Date 10/30/03

Statement of facts: Engineer Thompson was removed from his Reverse Lodging and HAHT position in the Salem to Dexter Pool on Turn DP31 and forced to work the position out of Salem therefore denying him his rights as per Side Letter 11 of the St Louis Hub Agreement and Letter of Understanding dated October 18, 1999.

Position of Committee: Engineer Thompson should not have been removed from his Reverse Lodging and HAHT position because there were never any unfilled engineer positions at Dexter or in the vicinity of Dexter and there were never any engineers forced to Dexter to protect unfilled positions. In fact company documents show there were engineers demoted at Dexter or forced out of Dexter to protect engineer positions at Salem and Villa Grove. While there were two (2) engineers (J M Schroeder and P G Redinger) forced to Dexter to protect their seniority as engineers as per the UTU 1986 National agreement they were not forced to protect unfilled positions. (If that had been the case when the two most junior reverse lodging engineers were removed from their position they and forced back to Dexter Schroeder and Redinger would have been released from Dexter). Company documents will show that when engineer positions became available at Salem and Villa Grove that Schroeder and Redinger could hold they chose to stay at Dexter. Engineer Thompson should be allowed a Basic Day at the basic through freight rate for each day that he was denied his rights as per Side Letter 11 of the St Louis Hub Agreement and the letter of Under Standing dated October 18, 1999.

Claim is supported by: Side Letter 11 of the St Louis Hub Agreement and Letter of

Understanding dated October 18, 1999.

Please allow and advise or advise of a date and time you have open to mutually agreeable to further discuss this matter.

Sincerely

Brad C Thompson

Brad C Thompson
Local Chairman

UNION PACIFIC RAILROAD COMPANY

1418 DODGE STREET
OMAHA, NEBRASKA 68179



February 18, 2004

L/R FILE
1380517/et al

L/C FILE
110301/et al

SUBJECT
1940

MR B C THOMPSON
LOCAL CHAIRMAN BLE&T
406 ROTH DR
SCOTT CITY MO 63780

Dear Sir:

Reference your letter received December 23, 2003, appealing the claims listed on the enclosed attachment on behalf of various claimants for various amounts of miles and/or time on various dates.

The Organization contends that the Claimants were removed from a reverse lodging assignment at Dexter and forced to the extra board due to the Carrier allegedly re-interpreting Side Letter 11 of the St. Louis Hub Agreement. In support of it's position the Organization cites Side Letter 11 and the letter of understanding dated October 18, 1999.

It is the Carrier's position that Side Letter 11 does not create a "home rule" or flow back agreement to train service as alleged and that prior right engineers at Dexter receiving reverse lodging are required to protect vacancies on the extra board before engineers are force assigned to Dexter from the common roster.

Initially, the Organization alludes to the premise that Side Letter 11 applies to all engineers hired in Dexter and created a so called "home rule" for Dexter engineers, or revised the flow back procedures between engine and train service. This is incorrect.

Side Letter 11 of the St. Louis Hub Agreement, deals with those engineers who resided in the vicinity of Dexter who elected to take reverse lodging, instead of relocating until at least April 1, 2005. At that time the Carrier may serve a thirty (30) day notice that all engineers who elected reverse lodging would be required to protect service out of the new home terminals of St. Louis or Salem. It also states that *"The provisions of this Side Letter No. 11 shall only apply to engineers residing in Poplar Bluff or Ilmo or vicinity, and protecting service at such location or vicinity, on October 10, 1997."* The Claimant was not an engineer, or even an employee, on October 10, 1997, and the provisions of Side Letter 11 do not apply to him, or any engineer promoted after October 10, 1997.

After the St. Louis Hub was implemented, when there was a vacancy that went no bid, CMS was forcing non-reverse lodging engineers to Dexter to fill vacancies, prior to forcing engineers who elected reverse lodging to first fill those assignments. It was brought to the Carrier's attention that the intent of Side Letter 11 was to provide employment at Dexter on an attrition basis for a number of years without the need to force "non Dexter" engineers to that location. As a result the parties entered into a letter of understanding dated October 18, 1999 concerning this issue. This

agreement clearly states that engineers holding assignments in the two (2) pools that allowed for reverse lodging (i.e. Dexter to Salem and Dexter to St. Louis) would be required to fill the non-reverse lodging assignments at Dexter prior to engineers being forced to Dexter. Contrary to the Organization's allegations, this does not create a "home rule" or flow back agreement as alleged. Engineers can still be forced to Dexter in line with their seniority, and are required to exercise all engineers' seniority, even at Dexter, prior to flowing back to train service.

In the late summer, early fall of 2003, the Carrier needed additional engineers in Dexter and was in the process of forcing junior common engineers to Dexter. It was during this process that engineers pointed out that the Carrier had engineers working on reverse lodging assignments in Dexter, who should be working on non-reverse lodging assignments in Dexter, before junior engineers were forced to Dexter. The Carrier reviewed the agreement and found that the non-prior righted engineers were right. As a result, the Carrier required only the necessary number of engineers working reverse lodging assignments to vacate those assignments and fill the non-reverse lodging assignments that they chose. If it so happened that they placed on the extra board they did so based on seniority, not because they were forced to them. This was in accordance with the agreement. Thus, when the Claimant was displaced off the extra board, it was a function of the exercise of seniority, not a violation of the agreement.

While the Organization states that the Carrier has reinterpreted the agreement, it has not done so. The Organization has on numerous occasions in the past stated that the Carrier was not following the agreement, or should read the agreement and follow it. Again this is what it did in this case, the Carrier re-read the agreement and it does not provide for a "home rule" or a flow back rule/agreement as the Organization contends. It states that prior to engineers being forced to Dexter, engineers claiming reverse lodging should be forced to fill unfilled non-reverse lodging assignments.

The Organization has made numerous attempts to re-negotiate the agreement to make the reverse lodging provisions, which can be ended after April 1, 2005, permanent. This appears to be an attempt by the Organization to change the agreement through the arbitration process, instead of through negotiations and is contrary to the Railway Labor Act.

Again, in the instant case, the forcing of engineers who have elected reverse lodging engineers to non-reverse lodging assignments that were unfilled was proper under the agreement. Since these engineers were on regular assignments when they were forced, some placed on the extra board, which forced the claimant off the extra board. This is a function of seniority, and does not violate the agreement and the instant claims are without merit. Accordingly, the instant claims are considered excessive, lack agreement support, as well as merit, and remain declined in their entirety.

Yours truly,

K. M. McBratney
Assistant Director Labor Relations

attachment

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1380548	110332	19-Dec-03
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1380564	110362/ET AL	19-Dec-03
1380565	110380	19-Dec-03
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1380567	110382	19-Dec-03
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1380585	1103100	19-Dec-03
1380586	1103101	19-Dec-03
1380587	1103102	19-Dec-03
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1380596	1103111	19-Dec-03
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